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## Legislative Assembly of Ontario

Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

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# Official Report of Debates (Hansard)

Tuesday 27 August 2013

# Journal des débats (Hansard)

Mardi 27 août 2013



**Standing Committee on  
Justice Policy**

Members' privileges

**Comité permanent  
de la justice**

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICY

Tuesday 27 August 2013

COMITÉ PERMANENT  
DE LA JUSTICE

Mardi 27 août 2013

*The committee met at 0902 in room 151.*

## MEMBERS' PRIVILEGES

**The Vice-Chair (Mrs. Laura Albanese):** Good morning, colleagues. I call the Standing Committee on Justice Policy to order. I am Acting Chair today, as our Chair is away on parliamentary business.

We do have our first witness here with us, but before we ask her to be sworn in by the Clerk, I would like to remind everyone that, at the last meeting, the Chair reserved on two motions, one moved by Mr. Fedeli and one moved by Mr. Tabuns.

Mr. Fedeli's motion is in order and may be debated; I would suggest that we do that and we deal with the matter at the end of the meeting, at the end of the day. Is there consensus? Yes.

Mr. Tabuns, I believe you are withdrawing your motion?

**Mr. Peter Tabuns:** I am withdrawing the motion that I have tabled, and I am putting replacement motions in its place.

**The Vice-Chair (Mrs. Laura Albanese):** So we will deal with that at the end of the day as well.

**Mr. Peter Tabuns:** I'm fine with that.

**Mr. Bob Delaney:** "Motion" or "motions"?

**Mr. Peter Tabuns:** I've got a book full of them, Bob—two.

**The Vice-Chair (Mrs. Laura Albanese):** Okay.

## MS. ALICIA JOHNSTON

**The Vice-Chair (Mrs. Laura Albanese):** So, without further discussion, we will now ask our first witness, Alicia Johnston, to be sworn in by our able Clerk.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Ms. Alicia Johnston:** I will.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Thank you.

**The Vice-Chair (Mrs. Laura Albanese):** I believe that the PCs will start. You'll be receiving questions—10 minutes from the Conservative Party, 10 minutes from the NDP, followed by the Liberals—

**Mr. Bob Delaney:** I believe it's 20, then 10, 10, 10.

**The Vice-Chair (Mrs. Laura Albanese):** Actually, it's 20 minutes. It is 20, 20, 20, then 10, 10, 10.

**Ms. Alicia Johnston:** Perfect.

**The Vice-Chair (Mrs. Laura Albanese):** I was hurrying the day along.

**Mr. Victor Fedeli:** Chair?

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Fedeli?

**Mr. Victor Fedeli:** May I ask: Is there an opening statement?

**The Vice-Chair (Mrs. Laura Albanese):** A five-minute opening statement, at the most. Thank you.

You may proceed.

**Ms. Alicia Johnston:** Thank you, Madam Chair. Can you hear me okay?

**The Vice-Chair (Mrs. Laura Albanese):** Yes, we can.

**Ms. Alicia Johnston:** Great.

Honourable members, I appreciate the invitation from the committee to appear here as you put together your recommendations. I hope that I can be helpful in providing information about my experience during my time at Queen's Park, from January 2006 until January 2012.

During that term I was honoured to serve in the offices of four ministers and former Premier Dalton McGuinty in various communications capacities. As director of communications to the Minister of Energy, the Honourable Brad Duguid, from June 2010 to January of 2011, in addition to dozens of other communications matters I assisted in the communications functions of the announcement of the relocation of the Oakville power plant, including reviewing communications materials, preparing the minister and helping answer questions from the media.

In February of 2011, I became director of issues management and legislative affairs in the office of the Premier. Part of my role was to support the Premier in preparation for question period and for media events. Part of my job was to gather information, to ask questions and to help coordinate on dozens of items throughout the day. I also had a supportive role across government, and would be available to help other staff on communication matters when they would arise, as it did from time to time regarding the relocation of the Oakville plant and amid growing concerns from community members and members of provincial Parliament about the Mississauga gas plant.



In the fall of 2011, I took a leave from government and volunteered on the provincial election. As the director of media relations for the Ontario Liberal Party, I provided support and advice on media relations and various communications functions for the campaign on dozens of announcements and commitments, including the Ontario Liberal commitment to relocate the Mississauga gas plant.

Shortly after the election, when I had returned to the Premier's office, I informed my chief of staff that I would be moving on to other opportunities. I agreed to stay on temporarily as the executive director of communications in the Premier's office, where, working with an excellent team, we supported the Premier and the government with a number of communications functions. My involvement with the Mississauga and the Oakville gas plants at that time would have been to provide support regarding public communications, as I would on hundreds of other items across government.

As you'll recall, during that time the construction was still under way at the Mississauga site, and most of our public communication was around assuring the community that we would keep our campaign commitment to relocate the plant. I believe the committee has heard from others that negotiations around the cost of relocating those plants were still under way when I left Queen's Park in January 2012.

I look forward to your questions, but before I pass the microphone back to you I'd like to briefly relay my personal experience attending the Oakville community event when the government announced the relocation of the plant.

First of all, I remember arriving at the event, which was almost three years ago now, and feeling real, palpable anticipation in the room for the announcement. Once the announcement was made, it was followed by exuberant cheers from community members. I was drawn aback by the emotions in the community, by the moms and the dads in that small room in Oakville, one who literally broke into tears beside me. I remember thinking how those community members had fought so hard against the gas plant and how they had finally been heard. It was one of the more memorable experiences in my time serving at Queen's Park, and it would be a real reminder to me about the power of local advocacy and the important role that our members of provincial Parliaments like you play in representing their constituents.

Almost three years have passed since then and 19 months have passed since I left Queen's Park. I'm aware that a great deal has happened on this file since I left. Again, thank you for this opportunity to come before you. I look forward to answering your questions and to assisting the committee to the best of my abilities.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. Mr. Fedeli, the floor is yours.

**Mr. Victor Fedeli:** Thank you very much, Chair. Good morning. You had talked about that Mississauga announcement two years ago in June. Who planned that event, Ms. Johnston?

**Ms. Alicia Johnston:** Hi, Mr. Fedeli. Do you mean the Oakville announcement?

**Mr. Victor Fedeli:** I'm talking about the Mississauga—were you speaking of the Oakville announcement?

**Ms. Alicia Johnston:** I was speaking specifically of the Oakville announcement, which I think was in the fall.

**Mr. Victor Fedeli:** I'm going to speak specifically about the Mississauga announcement, which was held 11 days before the announcement. You were on the campaign; you were directing communications. Who planned that Mississauga announcement?

**Ms. Alicia Johnston:** Thank you for the question. I'm happy to address that and speak to my experience on the campaign. I was the director of media relations on the campaign. As part of my duties I would be aware of and involved to varying degrees in numerous announcements throughout the day and throughout the campaign.

On that particular announcement, it was made by the local members in their constituencies, to the local community. I didn't attend that particular event, although I did see the coverage on TV afterwards. I was certainly aware of the event, and I would have likely seen the press release before it went out, as well.

0910

**Mr. Victor Fedeli:** Would you have looked at it or approved the press release?

**Ms. Alicia Johnston:** It's a fair question, and that's something—

**Mr. Victor Fedeli:** Who would have written the press release?

**Ms. Alicia Johnston:** Thank you for asking that. That's something I thought about in anticipation of coming before the committee, and I think it's a fair question that you've asked.

**Mr. Victor Fedeli:** Could you just answer it, then, please?

**Ms. Alicia Johnston:** I'd be happy to answer your question.

**Mr. Victor Fedeli:** Okay. Let's get to the answers.

**Ms. Alicia Johnston:** Okay. As I was saying, I would typically look at media materials. I don't recall ever approving that particular press release, but I imagine I would have at least had a look at it before it went out to the media.

**Mr. Victor Fedeli:** I'll ask you my first question again: Who planned the event?

**Ms. Alicia Johnston:** I'm going to speculate on this, because I don't know the exact individuals who would have planned that announcement, but it would have been led by the local campaigns. They would have known where the best place to actually host the event was that was accessible to the media. I can't actually answer who the specific people were.

**Mr. Victor Fedeli:** As communications person heading up the campaign, would you have worked with Don Guy?



**Ms. Alicia Johnston:** Just to clarify, I didn't head up communications for the campaign; my role was director of media relations. I just want to be exact.

Absolutely, I worked with our campaign director, Don Guy, both in the 2011 and in our previous election campaign—

**Mr. Victor Fedeli:** Who were the vice-chairs of the 2011 campaign?

**Ms. Alicia Johnston:** It was chaired by Greg Sorbara, and our vice-chair was Kathleen Wynne, our current Premier.

**Mr. Victor Fedeli:** Okay. So, Don Guy was the director, Mr. Sorbara and Minister Wynne were the vice-chairs—she was a vice-chair—and you're saying that you believe that it was the local people who planned the event? It wasn't the campaign that planned the event?

**Ms. Alicia Johnston:** The central campaign was certainly involved. They were absolutely aware of the announcement, and they were involved in it. It was done locally. It was made by them. The announcement, as you know, was not made by the Premier; it was made by the local members.

**Mr. Victor Fedeli:** So was this an Ontario campaign event or would this have been a local event?

**Ms. Alicia Johnston:** I would say it was both.

**Mr. Victor Fedeli:** Okay.

Your role in 2010—we have document number 2, if you want to roll to document number 2; it's quite an extensive document. On October 5, 2010, you're saying, "Here is my cut at the news release." It's quite a lengthy document that's here which talks about the Oakville power plant not moving forward.

**Ms. Alicia Johnston:** Mr. Fedeli, I'd love to follow you. If you could actually point to me—

**Mr. Victor Fedeli:** Second page, document 2.

**Ms. Alicia Johnston:** Yes. Okay.

**Mr. Victor Fedeli:** Document 2 is 23 pages long, and it includes a news release; according to your email, here is your cut at it. It's quite extensive. It gets into a lot of changes—some wording changes—but, obviously, you would have understood the issue extensively, first of all in your history at the Ministry of Energy and then your later history at the Premier's office. Certainly you would have understood this issue. Is that a fair assumption?

**Ms. Alicia Johnston:** Thanks for that. I would say that it would be fair to say that I had some awareness and knowledge of the issue in the announcement. My job at the time—I see that it's October 2010, in advance of the Oakville announcement—typically, as director of communications would be to have awareness about the announcement and to be able to input on the communications products. That was part of my job.

**Mr. Victor Fedeli:** So you penned this email—it's the second page of 23—from you to Jesse Kulendran, Craig MacLennan, Sean Mullin and others—

**Ms. Alicia Johnston:** I believe it's actually penned—

**Mr. Victor Fedeli:** —Maryanna Lewyckyj, Kevin Powers; many of them we've already had here. You

penned this. This is your "cut," as you call it, at the news release.

**Ms. Alicia Johnston:** It looks as though, from looking at this document, that I sent it to Kevin Powers and Maryanna Lewyckyj, who both worked with me at the Ministry of Energy. They were on the ministry side, in the communications branch. So typically we would work back and forth, sharing products. They played an important role, certainly, in fact-checking, and oftentimes they would take a—I use the word "cut." They would take a first cut at products. So we would move products back and forth—

**Mr. Victor Fedeli:** So you would have needed some knowledge of the Oakville file in order to provide your input into the draft here.

**Ms. Alicia Johnston:** Yes, I would say that would be fair, that I would have—

**Mr. Victor Fedeli:** Sean Mullin: How often did you speak with Sean Mullin about the Oakville cancellation?

**Ms. Alicia Johnston:** I appreciate the question. I understand Mr. Mullin has appeared here already, so—

**Mr. Victor Fedeli:** We only have 20 minutes, so I'm looking for you to get right to these answers, please.

**Ms. Alicia Johnston:** Thank you, and I'd like to be helpful in answering your questions. I also want to be as thorough as I can—

**Mr. Victor Fedeli:** Please.

**Ms. Alicia Johnston:** —and as exact as I can.

**Mr. Victor Fedeli:** Please.

**Ms. Alicia Johnston:** I'm not sure if you're asking about specifically at this time or generally. Sean and I would have worked together over a few years on numerous matters. At the time when I was with the Ministry of Energy, it was a very interesting time—

**Mr. Victor Fedeli:** I just want to know: How often did you speak with Sean Mullin about the Oakville cancellation?

**Ms. Alicia Johnston:** That's a number that I probably couldn't come up with. I would have spoken to him numerous times.

**Mr. Victor Fedeli:** Okay; "numerous." How heavily involved was Sean Mullin in the Oakville cancellation?

**Ms. Alicia Johnston:** Sean Mullin, as I assume he testified—I unfortunately didn't get to see it—would have spoken to the fact that energy was one of the files that he carried in the Premier's office. It would have been part of his job to be involved in—

**Mr. Victor Fedeli:** My question was: How heavily was he involved? What would you suggest?

**Ms. Alicia Johnston:** I hesitate to put a scale to it. As part of his job, he needed to be focused on it.

**Mr. Victor Fedeli:** Who else in the Premier's office was involved in the negotiations with TCE?

**Ms. Alicia Johnston:** I appreciate the question. I note you say the word "negotiations." That is something I will not be an expert on because I was not a party to the negotiations. As director of communications, my job was to focus on the public communications aspect and not on any negotiations that took place. But I think you have



had, and I'm sure you will continue to have, other people testify—

**Mr. Victor Fedeli:** So you're not going to tell me, in your opinion, who else was involved with you?

**Ms. Alicia Johnston:** I'm happy to speculate and also relay what I've read in newspapers and what I'm generally aware of—

**Mr. Victor Fedeli:** No, I'm not interested in the newspapers. You were there. You were at the Ministry of Energy. Sean Mullin was involved, from the Premier's office. It's a simple question: Who else did you deal with in the Premier's office when you were at energy on the Oakville file?

**Ms. Alicia Johnston:** Just so I'm clear about your question: You want me to note who else I dealt with in the Premier's office about the energy file?

**Mr. Victor Fedeli:** About the Oakville. That's exactly the question. Thanks for repeating it.

**Ms. Alicia Johnston:** Okay. So we're not talking about negotiations anymore?

**Mr. Victor Fedeli:** Who else in the Premier's office did you deal with on the cancellation on the Oakville plant?

**Ms. Alicia Johnston:** Typically, when any announcements were taking place, we would have dealt with the communications department in the Premier's office—

**Mr. Victor Fedeli:** I'm looking for some names here, please.

**Ms. Alicia Johnston:** You'll have to give me a moment to think about who would have been in the position at that time. There's typically—

**Mr. Victor Fedeli:** You do remember dealing with Sean Mullin?

**Ms. Alicia Johnston:** Yes, absolutely.

**Mr. Victor Fedeli:** Okay. So who else would you have been dealing with?

**Ms. Alicia Johnston:** I likely would have dealt the person responsible for the government rollout, the person who keeps track of when announcements happen throughout the day, so that you're not announcing 10 things on one day and nothing on the next day.

**Mr. Victor Fedeli:** All right. Let's move on, then.

The crafting of that message surrounding the October 2010—I'm going back to your cut on it. A little later in the email—the next email—there's some conversation from legal people who are changing the language in your document.

**Ms. Alicia Johnston:** Mr. Fedeli, can you point me to which document? Are we further along?

**Mr. Victor Fedeli:** We're now on the fourth page. This is to you from Maryanna Lewyckyj. She's saying, "Here are the latest." There are changes from legal. Why do the legal people feel it necessary to change the language in your document?

**Ms. Alicia Johnston:** Is this dated October 6, and it's at 2:14?

**Mr. Victor Fedeli:** Yes. Page 4, October 6—

**Ms. Alicia Johnston:** Okay. Sorry. Mine doesn't say "page 4." Again, your question? Apologies.

**Mr. Victor Fedeli:** Why did the legal department feel it necessary to change the language of your document?

**Ms. Alicia Johnston:** That is an excellent question for the legal department.

**Mr. Victor Fedeli:** They're all going to be excellent questions; trust me. We're looking for excellent answers.  
0920

**Ms. Alicia Johnston:** Great.

**Mr. Victor Fedeli:** I don't mean to be rude, but I have 20 minutes here and I don't appreciate the delay each time. Just let's get to the answers, please, Ms. Johnston.

**Ms. Alicia Johnston:** I'm delighted—

**Mr. Victor Fedeli:** Please, please, to the answers.

**Ms. Alicia Johnston:** —to be here as a guest of the committee to answer your questions. Again, that is a question that's best answered by the legal department. I'm not even aware, so I wouldn't—

**Mr. Victor Fedeli:** Okay; all right.

I see Jesse Kulendran, your co-worker, is listed on virtually all of these emails here. How involved was Jesse Kulendran in the ministry?

**Ms. Alicia Johnston:** I believe at that time, Jesse worked in the deputy minister's office. As the deputy minister would have been involved in most files—

**Mr. Victor Fedeli:** Most files. She wasn't a bit player. She's involved in all of these emails. In fact, on that fourth page: "Some changes to the remarks recommended by policy and Jesse." She's making changes here to the document. She would know enough about this file to make changes to this document?

**Ms. Alicia Johnston:** I'm reluctant to speculate about Ms. Kulendran's specific role—

**Mr. Victor Fedeli:** You worked with her.

**Ms. Alicia Johnston:** I did, but her job typically in the deputy minister's office would be to actually pass information from different policy branches in the ministry. That was her specific role. I don't want to downplay that role; it's an important co-ordinating function, but typically she would be passing information through the deputy's office, bringing—

**Mr. Victor Fedeli:** Well, according to this, she's making policy changes as well. That's fairly significant, in my opinion. Would you not agree with that?

**Ms. Alicia Johnston:** I'll leave that opinion to you. My understanding is that—

**Mr. Victor Fedeli:** All right.

Let's go to the back of this document 2, if you can find where it ends. It's the sixth-last page, and it's numbered page 1. It's an email from you to Ben Chin.

**Ms. Alicia Johnston:** Right. Is this October 7, 1:02 p.m.?

**Mr. Victor Fedeli:** This is, yes. Down near the bottom, it says, "Note answers on transmission at the end."

**Ms. Alicia Johnston:** Right.

**Mr. Victor Fedeli:** So you're talking about the transmission solution into Oakville. You understand that issue, then. If you're noting that there's a transmission answer at the end, you're acknowledging, then, that you understood enough to bring this up, that there's a trans-



mission section at the end here. You understand what that means?

**Ms. Alicia Johnston:** Yes. I believe at the time, the minister and the government was announcing to the local community that we would be not putting a plant in the community and that new transmission into the community should be able to meet the energy requirements.

**Mr. Victor Fedeli:** So even back as far as 2010, you knew there would be additional costs to the \$40 million and part of that cost would be transmission lines that you drew attention to. You're nodding "yes"?

**Ms. Alicia Johnston:** I'm about to answer your question. I knew that there would be costs to relocating the Oakville power plant—

**Mr. Victor Fedeli:** I just want to stop you for a second. You're probably the second person who has ever admitted that here, so I appreciate your candidness here, that there were additional costs and they were known as far back as 2010. Thank you. I appreciate that.

Let's go to document number 1; it's the first page. Do you have it there?

**Ms. Alicia Johnston:** I do.

**Mr. Victor Fedeli:** There's not much on it. Can you tell me why there's virtually nothing on this page?

**Ms. Alicia Johnston:** I'm delighted you asked this question. I believe the PCs actually put a press release out about this. I'm a private citizen now; I didn't have much of a forum to talk about it.

**Mr. Victor Fedeli:** Okay.

**Ms. Alicia Johnston:** There's an email that I sent from my personal Rogers account to my ministry account and it's at 11:53, so it would have been right before midnight and I think it's a day or two before the announcement. What I was sending was Qs&As, I believe, that I was working on at home. I didn't want to continue work in the office; I wanted to work at home. I didn't have a work computer at home, so I was forwarding my Qs&As to my work computer so I could forward it on to other folks.

The reason why I raise that is—

**Mr. Victor Fedeli:** So why is it redacted?

**Ms. Alicia Johnston:** —press release out at the time saying that I personally was trying to hide something, which I take exception to because, as you can see, I was just working hard on putting together materials late at night at home.

**Mr. Victor Fedeli:** Well, we wouldn't know that, because they're entirely redacted. So are you saying you're the one who redacted it?

**Ms. Alicia Johnston:** There are no redactions; there's just nothing written in the email.

**Mr. Victor Fedeli:** There's no attachment. It doesn't show that there was an attachment. So you sent yourself a blank email? Is that what you're saying?

**Ms. Alicia Johnston:** No, I was forwarding—

**Mr. Victor Fedeli:** Okay. It doesn't show that here. In fact, the—

**Ms. Alicia Johnston:** It does say "forward," actually.

**Mr. Victor Fedeli:** But it doesn't show any file; it doesn't show any text that's forwarded. Did you redact the text here? When you forward it, the text would actually forward with it; you could see it. Why can't we see the text here?

**Ms. Alicia Johnston:** Because there was no text, because I was sending an email from myself to myself, so I don't need to—

**Mr. Victor Fedeli:** Yes. Was it an attachment?

**Ms. Alicia Johnston:** Yes.

**Mr. Victor Fedeli:** It doesn't show here that there's an attachment. There's no signification that there's an attachment. The subject line—in fact, the word "subject" is not on the bottom email; it's been redacted as well, so we don't know that there was a topic.

**Ms. Alicia Johnston:** I think it's a fair question that you ask. If you look to the next email—

**Mr. Victor Fedeli:** Trust me; they're all going to be fair questions.

**Ms. Alicia Johnston:** —it's from Maryanna. She's forwarding my email to other individuals to have a look at, and she says, "Some questions on transmission were added. I'd appreciate it if you could look at the copy and see if there are any inaccuracies." I think it was just a mistake. I just wanted to clarify—

**Mr. Victor Fedeli:** Okay; all right. So it's a mistake.

**Ms. Alicia Johnston:** It was a mistake the PC Party made, and that's fine.

**Mr. Victor Fedeli:** No, no, no. The PC Party made no mistake. We received a file—

**Ms. Alicia Johnston:** Well, you put a press release out—

**Mr. Victor Fedeli:** —it's been completely redacted here. There's no information. The subject line—in fact, the word "subject," so we could see what the subject line actually said—is not on here. There is no document. There is no attachment. There is no signification. You'll see many, many other files that have an attachment; the icon comes up. All that has been removed from this, and it only leads us to wonder what was redacted here. We can try to take your word for it here that you were sending yourself a file to a file—

**Ms. Alicia Johnston:** I think you just need to look at the documents you provided. These are part of the documents that were in that email, but we don't need to discuss it. That's fine.

**Mr. Victor Fedeli:** Well, let's get to those documents. Your name only came up 288 times, yet virtually everybody else involved, nowhere near as deeply as you, in this—they weren't from the ministry and then from the Premier's office—are in the thousands of documents. Even in the worst-case scenario—we've been able to recreate deleted files and destroyed files—we can get up to 1,500 or 2,000 on many people. For you, we have 288 files. Can you tell me why, if you were crafting messaging for the Oakville cancellation when you were at energy and you were in the Premier's office during the negotiations for Mississauga—did you regularly delete your email?

**Ms. Alicia Johnston:** I'm appreciative of the opportunity to speak to this. I'd like to first address what you mentioned early on in your preamble to the question, and that is, as it relates to the number of documents—

**Mr. Victor Fedeli:** Yes. We have 288 for you.

**Ms. Alicia Johnston:** Right. I'm not sure how that measures up with others—

**Mr. Victor Fedeli:** I can tell you. It's shy by more than 1,000.

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Ms. Alicia Johnston:** So, as I mentioned in my opening statement, I certainly was involved in the announcements of both relocations of gas plants. I also left Queen's Park in January 2012. At that time—

**Mr. Victor Fedeli:** But we only have 288 emails for you, including one here that's been redacted. Where would those Qs&As be, then, that were attached to this? Where are they?

**Ms. Alicia Johnston:** I believe I saw them, actually, online. There were lots of Qs&As that were part of the documents that this committee—

**Mr. Victor Fedeli:** How will we know that this was this one? How can we see that? If it was from you to you—

**Ms. Alicia Johnston:** I would look to the committee for information about their materials.

**Mr. Victor Fedeli:** But hear me: If you sent it from yourself to yourself, the Alicia Johnston at MEI should have a file it received, and that should have been sent to us. Would you not agree that that's not a transitory file, that that's an actual document we should have had? Not the one you sent, but the one you received—where is that one?

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. We will pass it on now to the NDP, and we will continue the conversation after.

**Mr. Peter Tabuns:** Okay. Thank you, Chair.

Ms. Johnston, thank you for being here this morning. Just a few questions before I get into the main body: During the 2011 campaign, who gave you direction to pull together the Mississauga release and media documentation?

**Ms. Alicia Johnston:** Thank you, Mr. Tabuns. I think you ask a fair question. As I mentioned earlier to Mr. Fedeli, my job was to be director of media relations—

**Mr. Peter Tabuns:** I actually don't need all that. I'd like to know who told you to pull it together.

**Ms. Alicia Johnston:** I actually did not pull together all of the materials. That was not something that I personally was tasked with for that particular announcement.

**Mr. Peter Tabuns:** You had nothing to do with that announcement?

**Ms. Alicia Johnston:** No, I don't think that's true. I believe what I said earlier was that it's likely that I would have had a look at the press release. I don't remember signing off on it per se, and I don't remember the specific task of looking through it, but I likely would have had a look at it, as I would have most of the materials that went

out. I'm happy to speak more generally to how we would create and produce materials—

**Mr. Peter Tabuns:** Who gave it to you to check?  
0930

**Ms. Alicia Johnston:** That's a great question. I can't recall who would have given it to me. It could have been the campaign director. It could have been one of the folks that worked in the communications shop. We had a great team and it was, you know, a big, open office with lots of people working there. I'd like to be helpful in answering it; I just also want to be accurate.

**Mr. Peter Tabuns:** You know, you're giving us a lot of filler today, and I don't appreciate it, and I don't think the committee appreciates it. You can't tell me who gave it to you?

**Ms. Alicia Johnston:** I'm trying to be helpful, Mr. Tabuns—

**Mr. Peter Tabuns:** If you can't tell me, say that.

**Ms. Alicia Johnston:** I'm happy to provide more context but I don't know the specific person.

**Mr. Peter Tabuns:** Okay, so you don't have a recollection of who gave you the material to review for a release. That's fine. I'll go to the next question.

**Ms. Alicia Johnston:** There would have been hundreds of announcements, so—

**Mr. Peter Tabuns:** Yes? So you don't remember. In the course of dealing with the Oakville plant around the time of summer of 2010 and into the announcement, who in the Premier's office did you deal with on this matter?

**Ms. Alicia Johnston:** So, in the summer of 2010—that was the lead-up to the Oakville announcement, which I think happened in October.

**Mr. Peter Tabuns:** Correct.

**Ms. Alicia Johnston:** So, in the summer of 2010 we actually probably weren't working on the Oakville announcement. It would have been closer to the—

**Mr. Peter Tabuns:** Okay, let's move into September. In the fall, in September, who were you dealing with? You were writing emails from home about media releases. Who in the Premier's office did you deal with on this file?

**Ms. Alicia Johnston:** I would have dealt with a number of folks. The person that I most likely would have dealt with was Sean Mullin, who was the policy adviser.

**Mr. Peter Tabuns:** I know that, and who else?

**Ms. Alicia Johnston:** I also would have worked—closer to the actual announcement time I would have co-ordinated with the communications planning function of the Premier's office—

**Mr. Peter Tabuns:** And who would that have been?

**Ms. Alicia Johnston:** So, at the time it would have—I'm trying to actually remember who the director of communications was at the time. I think it was before Brodhead's time. The communications planners—there were a few of them. There were three of them, so I probably would have dealt with all three of them on a daily basis.



**Mr. Peter Tabuns:** Okay, so you dealt with Sean Mullin and then the communications planners?

**Ms. Alicia Johnston:** Yes. Sean Mullin was a great help in the lead-up to that announcement.

**Mr. Peter Tabuns:** I'm glad he was. You have no recollection of who those three or four communications people were?

**Ms. Alicia Johnston:** It could have been any one of them on a particular time. I also would have dealt with the press office as well, because we would be making the announcement and coordinating the actual—

**Mr. Peter Tabuns:** So you can't remember the names of any of those people in communications?

**Ms. Alicia Johnston:** I think it's really easy for us to find the employment records of the Premier's office. I mean, it would have been any number of them because, you know—the press office was sending out the media advisory and ensuring that the press release got on the wire.

**Mr. Peter Tabuns:** That's fine. You have our documents in front of you?

**Ms. Alicia Johnston:** I do.

**Mr. Peter Tabuns:** Document 7: This is a lot narrower. This is a communication between you and Ben Chin.

**Ms. Alicia Johnston:** Right.

**Mr. Peter Tabuns:** The first question is, did you folks have a practice of hiring reporters to make them friendly to you?

**Ms. Alicia Johnston:** I'm sorry?

**Mr. Peter Tabuns:** Did you have a practice, did the OPA or did your ministry have a practice, of hiring people—reporters, communications people—so that they would write friendly stories about you?

**Ms. Alicia Johnston:** I don't believe so, and usually reporters can't be hired; their objectivity when they're reporters is very much—and my practice. That's what I—

**Mr. Peter Tabuns:** So why would Ben Chin suggest that someone be thrown work so that they would be feeling—

**Ms. Alicia Johnston:** I'm not sure what you're referring too.

**Mr. Peter Tabuns:** Well, why don't you read that first email, the one at the top, Ben Chin to Alicia Johnston? “We need him.” “We need him” to “feel special. We need to throw him some work. He doesn't need it, but everyone likes feeling wanted.”

**Ms. Alicia Johnston:** Right; okay.

**Mr. Peter Tabuns:** Did that strike you as unusual when you got that?

**Ms. Alicia Johnston:** I cannot remember receiving the email. I certainly did; it says that it was sent to me, but I have no memory of it.

**Mr. Peter Tabuns:** I don't know about you, but for me the idea that someone at the Ontario Power Authority would be offering work to a journalist to make them feel wanted strikes me as very strange and unusual. It didn't strike you that way? It was a common thing?

**Ms. Alicia Johnston:** The journalist you're speaking of is?

**Mr. Peter Tabuns:** You can read it. He didn't initiate this.

**Ms. Alicia Johnston:** I'm not sure if he was a journalist at the time or was not. I know he's not anymore.

**Mr. Peter Tabuns:** Okay. In the one below that, you to Ben Chin say, “Just got off the phone ... who had a few qs.

“We've got to get him out as an ‘expert’ commentator.”

So you did a fair amount of work with this journalist.

**Ms. Alicia Johnston:** As I mentioned, I don't believe he was a journalist at the time.

**Mr. Peter Tabuns:** I gather he was commenting on these matters. He's publicly known.

**Ms. Alicia Johnston:** Yes. He's a very bright guy and certainly was—I see I used the word “expert.” I would say he's an expert; he certainly knows a great deal—

**Mr. Peter Tabuns:** Yes, and a commentator. You don't remember writing this to Ben Chin?

**Ms. Alicia Johnston:** I don't, but it certainly says that it was an exchange between the two of us in November.

**Mr. Peter Tabuns:** Just in case your memory does revive itself, the bottom here—

**Ms. Alicia Johnston:** Just to be clear, Mr. Tabuns, I'm not denying that this exchange happened in any way, shape or form.

**Mr. Peter Tabuns:** I know you're not denying it. You just have no recollection of it whatsoever.

**Ms. Alicia Johnston:** As is the case for everybody on this committee, most of us receive many, many emails throughout the day and send them quickly. Sometimes we have a great choice of words, and sometimes we don't. This was a moment three years ago almost, so I don't really remember.

**Mr. Peter Tabuns:** Fair enough. At the very bottom, Ben Chin writing to you again: “Yes, I heard. All good. He's been very good throughout this, and other than CA”—and I'm going to guess Colin Andersen, but I don't know—“my only ally on SWGTA. Good thing he's here.” I assume he's talking about Amir Shalaby. Do you have any recollection of Mr. Chin not having allies on the southwest GTA?

**Ms. Alicia Johnston:** I do not recall thinking about that or not. I think I was impressed by Amir. He was quite helpful at the Ontario Power Authority when we had questions, and he would get back to us quite quickly.

**Mr. Peter Tabuns:** Did you draft the press release announcing that the Oakville gas plant would not proceed? That's documents 1 and 2 of the package in front of you.

**Ms. Alicia Johnston:** Sorry, I'm aware of the press release you're speaking of, but it's documents 1 and 2?

**Mr. Peter Tabuns:** Yes. On the second page at the bottom. It's from you to Maryanna Lewyckyj and Kevin Powers: “Here is my cut at the news release.”

**Ms. Alicia Johnston:** Right.

**Mr. Peter Tabuns:** So you remember this news release, “Proposed Oakville Power Plant Not Moving Forward”?

**Ms. Alicia Johnston:** I do remember the news release.

**Mr. Peter Tabuns:** Okay. Is it standard to include the cost of projects when you write a press release?

**Ms. Alicia Johnston:** That's a fair question, and there wouldn't be any standard one way or another. A news release would typically have the facts of the announcement in there and usually would contain quotes. It was formulaic in that way.

**Mr. Peter Tabuns:** Okay. Can I just say that we've done a lot of scrums here, and from reading your emails, you've observed or been in a lot of scrums. Reporters tend to ask questions about numbers. It's just the way they are; they're quirky. So when you go out and you aren't prepared to address a dollar issue, you're going to get further questions. But you didn't have a price in here. I'll come back to that.

Who made the decision to cancel the Oakville plant?

**Ms. Alicia Johnston:** It's my understanding that the Premier and the minister made the decision.

**Mr. Peter Tabuns:** And who told you?

**Ms. Alicia Johnston:** The minister and the chief of staff would have informed me at the time.

**Mr. Peter Tabuns:** So were you involved in any way in the discussions that led to the cancellation?

**Ms. Alicia Johnston:** I was not part of the decision-making that led to me then being informed about the decision to proceed with announcing it.

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**Mr. Peter Tabuns:** And what was the justification you were given, given that you were going to be writing the media release on this?

**Ms. Alicia Johnston:** I believe there were a few reasons why. I remember a few things at the time. We were in the process of putting together Ontario's Long-Term Energy Plan. This is, as you know—you've been the energy critic for quite some time—the follow-up to the IPSP. In those deliberations there was lots of work that was done—and I won't go into detail about this because, as you know, I'm not a policy expert—about the demands and the energy needs in communities across the province. So that was part of the process. It was also an opportunity to make changes—

**Mr. Peter Tabuns:** I think you've given me as much answer as I will find useful.

**Ms. Alicia Johnston:** And then there was the local community, of course, as well.

**Mr. Peter Tabuns:** That's fine.

Did you draft a question and answer about the cancellation of the Oakville gas plant? Those are documents 3 and 4.

**Ms. Alicia Johnston:** I certainly participated in creating the Qs&As—sorry; questions and answers—and the key messages. I'm not sure if I would have been the first person to put pen to paper on them, but it's absolutely fair to say that I helped.

**Mr. Peter Tabuns:** You played a big role in this.

**Ms. Alicia Johnston:** Well, it was my job, as director of communications in that office, to assist the minister and—

**Mr. Peter Tabuns:** That's why we think you played a big role in this.

In question 2, you ask, "How much will this cost taxpayers? How much will this increase the electricity bill of an average ratepayer?" Then you say, "We will include a full costing of the long-term energy plan when it is released."

Where did that information come from? Who told you that this would all be costed out in the long-term energy plan?

**Ms. Alicia Johnston:** I appreciate the question. I can't speak to who said what to me specifically, but I can provide you with some context around this. I remember, at the time, certainly the Oakville announcement was an important one, as were many other energy announcements that we were making. But as you'll recall, at the time—and Ontarians were really feeling the pinch on the cost of energy. Electricity prices had increased a lot—

**Mr. Peter Tabuns:** Do you know what? I'm more interested in who told you this than that context, so maybe I was imprecise in my question. Who gave you this information? Who made the decision for that to be the answer on the cost?

**Ms. Alicia Johnston:** On question 2 of the draft, I'm not sure of questions and answers that were prepared three years ago.

**Mr. Peter Tabuns:** It says, "How much will this cost taxpayers?" How much will this affect—

**Ms. Alicia Johnston:** I'm not sure who would have drafted that specific sentence. I'd be delighted to give you some context around why we spoke about the long-term energy plan and price.

**Mr. Peter Tabuns:** That's fine. I looked at the long-term energy plan. There's nothing in there about price related to this plant. So let's just go back—

**Ms. Alicia Johnston:** I believe the question was about electricity bills and ratepayers, so that's why I was trying to give you some context about the long-term energy plan and people's bills.

**Mr. Peter Tabuns:** But that isn't what I asked. I want to know who gave you direction, and you haven't answered that. At this point, I'm not sure I will get that.

Didn't you ask, when you were given this to draft, "So what's it going to cost?" This is an awfully vague answer. Didn't you press the people who were working with you to get at that cost?

**Ms. Alicia Johnston:** I'm sure we had discussions about the types of questions that would come up, and that's why we draft Qs&As, like we do with any announcement. Their rationale behind this specific answer in this case was to do with people's electricity bills and the fact that—

**Mr. Peter Tabuns:** You didn't ask anyone what it was going to cost? You didn't press?

**Ms. Alicia Johnston:** At the time, I was aware that future costs would be incurred and that the negotiations between the government—or, rather, the OPA as well, I suppose—and the company would need to take place and that those costs would become—



**Mr. Peter Tabuns:** I'm going to turn it over to my colleague for a moment.

**Ms. Catherine Fife:** Thank you. How much time do we have, Chair?

*Interjection.*

**Ms. Catherine Fife:** Four minutes? Thank you.

Thank you, Alicia. So just staying on the cost questioning: On October 7, 2010, you did write to David Lindsay about the announcement, and you said, "Financially it'll be muddy in the papers tomorrow." Why would it be muddy? Why did you use that language when you—you didn't have a full picture of how much it would cost; however, you did admit that you knew there would be some costing. So can you give us some insight into that language?

**Ms. Alicia Johnston:** Absolutely. Thank you for the question, Ms. Fife. Can you also refer me to the specific email that you reference?

**Ms. Catherine Fife:** Yes. It's in the email in your package. It's on—I just had it. It's from October 7. It's on pages 5 and 6.

**Ms. Alicia Johnston:** I've got it, yes. Okay, I see this is an email I sent to David Lindsay, who was our deputy. As a side note, it was great to work with him, not only because he was a fine deputy but just because of his political experience and—

**Ms. Catherine Fife:** "Muddy"—why did you use the word "muddy"?

**Ms. Alicia Johnston:** Looking back on this email, it's interesting—right?—because part of my job was to pay attention to the media and the media coverage and also pay attention to announcements and how it would be reported. I think what I'm doing here is I'm writing to the deputy, and I'm reporting the—

**Ms. Catherine Fife:** You're projecting the feedback that you're going to get for not having a figure for cancelling the Oakville gas plant?

**Ms. Alicia Johnston:** Actually, I think in my own words, what I'm doing is relaying what we will see, likely, on the TV screen that night, which was folks who were—I say that the room full of people had erupted "in cheers of joy and applause." I do indeed speak to the fact that there will be outstanding questions about cost, as we would have anticipated going into that announcement.

As Mr. Tabuns mentioned earlier, we did not put a price into the news release, because that price was unknown. What I was articulating was the fact that the media wouldn't have had answers to those questions, and therefore—

**Ms. Catherine Fife:** But you do mention further on—you say that the province "could be on the hook for millions and minister wouldn't comment about it." Why wouldn't the minister comment on it? You knew that somebody in that room, amidst the applause and the crying, was going to ask the question, "How much is this actually going to cost?"

**Ms. Alicia Johnston:** And I believe the media likely did ask that question.

**Ms. Catherine Fife:** But you've also stated that it's your job to actually inform the minister of potential questions and to provide answers so that he actually had something to respond to. Why wouldn't the minister comment? If you're the director for communications on this particular issue, you need to prepare the minister. Did you not prepare him with any kind of answer to this question?

**Ms. Alicia Johnston:** I think you're asking a fair question. Absolutely, it was my job to help prepare the minister for the announcement. I think, in my earlier conversation with Mr. Tabuns and also Mr. Fedeli, I spoke to the fact that the cost at that time was not known, and I would have—and would, any time in the future, not encourage people to provide facts that were not accurate.

**Ms. Catherine Fife:** So you had no idea, at the time of the writing of these Qs&As around the decision, that it was going to cost—what the true cost was going to be?

**Ms. Alicia Johnston:** That's correct, and I don't think anybody in this room knows the answer to that.

**Ms. Catherine Fife:** But you knew that it was going to be millions and millions.

**Ms. Alicia Johnston:** I believe the specific line is—I'm interpreting what I expect the media to report, which is not an exact science, and anticipating what the media are going to report. That was sort of my best guess on what I thought they might include.

**Ms. Catherine Fife:** But using the word "muddy," though—you clearly anticipated the fact that you were going into this situation not knowing enough about the cost and not knowing about the fallout, but somebody somewhere made the decision that it was worth the risk.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Ms. Fife. We'll now move on to Mr. Delaney.

**Mr. Bob Delaney:** Thank you very much, Chair. Good morning, and thank you very much for being here.

**Ms. Alicia Johnston:** Thank you.

**Mr. Bob Delaney:** Just to quickly recap, you worked for the Ministry of Energy in 2010 and then moved to the Premier's office in 2011, and then left the government a few months following the 2011 election, correct?

**Ms. Alicia Johnston:** That's correct.

**Mr. Bob Delaney:** Okay. So you would have left Queen's Park prior to either deal being finalized.

**Ms. Alicia Johnston:** That's correct.

**Mr. Bob Delaney:** And you would have left Queen's Park months before the estimates committee motion that asked for documents related to the two relocations, correct?

**Ms. Alicia Johnston:** Yes. I actually do not know the dates when this committee was struck, but it was quite some time after I left.

**Mr. Bob Delaney:** Okay. So there's not a lot of point, then, in asking you about costs, as you had left Queen's Park by that point, right?

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**Ms. Alicia Johnston:** I would say that that's fair. My understanding—and I would emphasize the fact that I have not been following the facts of this issue as closely

as many of you have, so I would beg the committee's consideration of that fact. My understanding is the Auditor General is still looking into the Oakville case. Even though I was not here for recent events on this issue, I'm happy to be here to answer questions and to provide any insights.

**Mr. Bob Delaney:** Well, let's talk a little bit, then, about the Oakville plant. Again, to recap, the decision to relocate the Oakville gas-fired generation plant was made well before the 2011 election, correct?

**Ms. Alicia Johnston:** It was announced in October 2010, so that would have been a year before the election.

**Mr. Bob Delaney:** Okay. In terms of the rationale for that decision—referring to Oakville—testimony before this committee has shown that there were some serious issues with the siting of the plant, including an already-overtaxed airshed, the lack of a buffer zone to ensure the safety of residents, and the close proximity to homes and a school. Perhaps you could elaborate—and I know you did a little bit earlier—on some of the concerns that you heard and how they contributed to the decision to relocate that plant.

**Ms. Alicia Johnston:** I'm sorry. You're speaking specifically about Oakville?

**Mr. Bob Delaney:** Oakville.

**Ms. Alicia Johnston:** Yes, I can touch on that. I think there are probably individuals who are better equipped to speak from the local perspective, and I think you've had many of them here already. At the time, I remember Kevin Flynn was a really strong advocate and he was very vocal, and if the committee will allow me to speak frankly, that's always awkward for political parties when particular members have a different position than their own. I know for all of our political parties, that's the case: Sometimes, as local members, you need to go out on a limb and you need to stand up for your constituents and not toe the party line. I'm not a parliamentary historian, and I don't know how things have changed in that way over the years, but I remember, at the time, it was a challenge, that we were not all on the same page on a particular issue.

I think, in my opening remarks, why I wanted to make note of how that particular event was meaningful to me—this is the Oakville announcement—because it was a local community and local members changing the government's mind, and that, to me, was significant.

**Mr. Bob Delaney:** Okay. You've talked about your feelings on the reaction of the community when the announcement was made. Is there anything you wanted to add to some of the things you felt when the province made the decision not to proceed with Oakville?

**Ms. Alicia Johnston:** I think I'll just touch slightly on that. I think—and this is a very personal perspective—when I left that announcement, I certainly felt like the government had done the right thing and had moved in the public interest. That was my feeling at the time. And just from my desk at Queen's Park, I always tried to remind myself of how everything that government does and all decisions that are made affect people, and it's

important to remember those people and those faces. So it was a reminder to me in that way. I know members of this committee—you represent people in constituencies, in your communities. That is, of course, not something that you bring to your job every day, but for somebody like me, who doesn't represent a specific community but just works on behalf of all Ontarians, it's nice to be reminded.

**Mr. Bob Delaney:** Oakville borders my riding, and it was, in fact, a very popular decision. Another reason the decision was made to relocate the plant was that, as the long-term energy plan was updated in the summer and early fall of 2010, it became clear that the electricity that would have been produced by the plant was no longer required in the Mississauga and Oakville area because, very frankly, demand had changed, and it was determined that a transmission solution was possible. Could you tell us how those factors contributed to the eventual decision to relocate the plant?

**Ms. Alicia Johnston:** A little bit. I'm not an expert in energy supply and demand. There are folks far better equipped to speak to those types of questions. I was aware of the fact that the energy demands were not as high as they had been previously and that we had been able to bring online a significant amount of power. Ontario's energy mix was going through some real changes, especially on the renewables side; the energy mix was getting much more diverse with new wind and new solar coming online. There are some significant projects that OPG had been working on, as well as many gas-fired generators that had been built across the province—15, in addition to the specific projects that were in Oakville and Mississauga.

**Mr. Bob Delaney:** When JoAnne Butler from the OPA gave testimony to this committee, one of the comments she made was that transmission upgrades were, and are, needed in the southwest GTA—which largely means Mississauga, Oakville and Milton—with or without a new plant in the region. From what you recall, and based on your experience on the file and whatever you may remember of the long-term energy plan, would you agree with the assessment of JoAnne Butler?

**Ms. Alicia Johnston:** I wouldn't have the expertise to answer that question. I know that the Ontario Power Authority made the recommendations on that particular area—on where the plants would go—as they would as part of their job to do power planning across the province. I have no expertise in that area. I know there are challenges to putting in transmission lines and putting in any energy infrastructure, but certainly putting in a new, very large, gas-fired power plant in that community was not the right decision.

**Mr. Bob Delaney:** Let's move back to some of the things that you were doing at the time—again, referring specifically to the Oakville plant. In terms of the opposition's view of the government's decision, testimony from many members of the Oakville community—both here and elsewhere—has confirmed that both the NDP



and the Progressive Conservatives were committed to cancelling the Oakville plant.

Right at the committee, Mayor Burton told us that his citizens, to use his words, “won promises from all parties to stop the proposed power plant.” At the committee and outside it, we have a series of quotes confirming just that. In fact, on June 1, 2010, Ted Chudleigh, the PC member from Halton—you were there at the time; you may remember this—said, “The people of Oakville have told you they don’t want the proposed gas-fired power plant ... and I agree with them.” In that October in 2010, our colleague from the NDP Peter Tabuns said, “I don’t agree with the Oakville power plant.” Again, just as illustration, you must have been aware of the opposition’s position on the Oakville power plant around that time, in the fall of 2010, right?

**Ms. Alicia Johnston:** Yes, I was aware of that, and I remember that Mr. Tabuns was a big advocate for not having that plant move forward.

**Mr. Bob Delaney:** In what you’ve been following of the committee, what do you make of the two opposition parties apparently changing their mind and pointing fingers at our government for following through on the very same commitment they themselves made?

**Ms. Alicia Johnston:** I will not answer that question. Cautiously, I haven’t come here with any particular intentions of jousting with the opposition parties on their positions, but I will say that it was important to us—especially in the case of Mississauga, after the campaign commitment had been made—that we saw that commitment through and that we kept our promise to the individuals in those committees. I remember that being important and a priority. Of course, you—quite rightly, as many others have—pointed out that it was a position that was shared by all three of the parties.

**Mr. Bob Delaney:** I think that one of the differences between the three parties—something we’ve heard from numerous witnesses—was that, rather than simply cancelling the plant, paying money and getting no electricity, the best path forward after the decision was made not to move ahead with the Oakville plant was to negotiate an alternative site with TransCanada Energy.

**Mr. Victor Fedeli:** A point of order, Chair.

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Fedeli.

**Mr. Victor Fedeli:** A point of order, Chair. Thank you, Chair. It should be noted that the gas plants were indeed cancelled, paid a fee, and we did get no power for them.

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**The Vice-Chair (Mrs. Laura Albanese):** That’s not a point of order, Mr. Fedeli.

**Mr. Bob Delaney:** In fact, witnesses have testified before this committee that renegotiation and relocation was the better path, as opposed to ripping up the original contract and paying damages without any new power produced. In fact, former deputy minister of energy David Lindsay said, and I’ll use his words, “Paying costs and getting no electricity would not be a very good business decision.”

Going back to the time that you were in government, would you agree with that?

**Ms. Alicia Johnston:** I think that sounds reasonable to me, but I will leave those types of determinations to others. I think certainly the auditor is a good expert on the matter. But it seems, on the surface, entirely reasonable to relocate and thus reduce the amount of exposure to taxpayers.

**Mr. Bob Delaney:** Mr. Lindsay, the former deputy minister, also testified about the risks of ripping up an agreement instead of renegotiating it. He stated, “if you have a contract and you don’t honour the contract, the party on the other side can sue you for breach of contract and the damages would be all the benefits they were hoping to procure.”

From the Attorney General’s office, John Kelly testified, “I’m fairly satisfied there would have been litigation,” and he was referring to if the government and the OPA had not renegotiated with TransCanada Energy on an alternative plant.

Mr. Kelly also said, “In my experience, after 40 years of litigating, if you can avoid litigation, you should. It’s a process that’s fraught with risk.”

Going back to the time you were in government, would it be fair to say that under these circumstances, the best way for the government to be sure to avoid litigation fraught with risk was to either reach a settlement on damages or to negotiate for a new plant with TransCanada Energy to find a new project?

**Ms. Alicia Johnston:** Thanks for the question. Again, I’m not sure I can provide expertise on that matter or look reflectively upon the whole state of events and provide an opinion. What I can tell you is that at the time, litigation was a real concern and it was certainly something that lawyers were advising us to avoid. I think you used the term “fraught with risk,” and that certainly was something that I was aware of.

**Mr. Bob Delaney:** Yes, I recognize that, and that’s why in asking you the questions I’m giving you a bit of a preamble, because it’s been a year and a half since you’ve been part of the government.

In terms of the Mississauga plant, the committee has heard that there was enormous community opposition to the plant, in particular in the summer and the fall of 2011 when the proponent finally secured financing and construction actually began. Our community leaders in Mississauga, including Mayor McCallion, have testified that there were serious health and environmental risks for both the southeast Mississauga and the Etobicoke areas. In fact, local advocates have worked hard to secure commitments by all three parties that they would cancel the plant if elected in the 2011 election.

Now, during that time, you were active on the campaign and I would assume that you paid close attention to the policies and the commitments of the other two parties. You would then have been fully aware that both opposition parties had pledged to cancel the Mississauga gas plant, correct?



**Ms. Alicia Johnston:** That's correct. I was absolutely aware that both parties had pledged to cancel the Mississauga gas plant if they were elected, and that was something that they took to people during that election. In the lead-up to the campaign, that was not a commitment that our government had made. I do recall that local members opposed the government's position at that point, and I recall the Minister of the Environment had expressed concerns. I believe he had a review going on about the air quality because there were some changes to the community in recent years. I think this was a gas plant that was procured years ago. I can't remember the exact year. I think it was 2005. Also, the Premier had publicly expressed some concerns as well.

**Mr. Bob Delaney:** Okay. In fact, just about every witness before this committee has confirmed that there were clear commitments made by all three parties to cancel or relocate the plant in Mississauga. Mayor McCallion said, in her words, "The impression that was certainly given beyond a doubt ... I think all parties would have cancelled it."

At the committee, we've seen election flyers and telephone robocall transcripts that confirm that these, in fact, were very clear commitments.

Given that, what did you make at the time and since of the attempt to rewrite history to have other members stand up and point fingers at our government for basically following through on the very same commitments all three parties had made to the people of Mississauga?

**Ms. Alicia Johnston:** Well, I think following through on the commitment is the important part of what you've just said. Looking back, I suppose the Liberal government could have gone back on their commitment and gone back on their promise and kept the power plant in Mississauga. I don't think that would have been in the public interest, and I don't think that would have been the right thing to do at the time.

I don't believe any of the parties had articulated the cost, during election time, of the relocation of those plants. I certainly wasn't aware if the other two parties had provided a costing on it.

Regardless, the commitment was made during the campaign, and the government saw that commitment through in the follow-up to it.

**Mr. Bob Delaney:** So as you've mentioned, with all three parties having committed that they would cancel the plant, it was, of course, the Liberals that were re-elected, and it was our government's responsibility to implement the commitment made by all three parties to, in this case, relocate the gas plant. Since construction had started at the Mississauga site, it was important to reach a deal to halt the construction as soon as possible. In your recollection, were you concerned that the longer that construction continued, the higher would be the sunk costs?

**Ms. Alicia Johnston:** I think that's fair to say. I think that was everybody's concern at the time. There was a desire to move quickly and to provide some reassurance to the local community that even though construction

was under way, the government—well, once the Ontario Liberal Party that had returned and become government—was keen to see that through and was committed to seeing it through. I don't know if that's answered your question.

**Mr. Bob Delaney:** That's good. Before the committee, former Auditor General Jim McCarter stated that increased media scrutiny of the ongoing construction had contributed to the pressure to get a deal done as soon as possible.

Adding to that pressure, of course, were some of the political games being played at the time. I remember the PCs had an event where they inflated a big red elephant beside the construction site and circulated photos to the media a few weeks after the election showing that construction was still proceeding.

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Mr. Bob Delaney:** From your vantage point, that type of pressure—how would that have affected the Ontario Power Authority's negotiation position?

**Ms. Alicia Johnston:** I can only speak generally to how I felt at the time, and I felt like the opposition was working against us coming to a deal. I felt like the opposition, specifically the Conservatives at that time, enjoyed the fact that construction was still going on in that community. I personally found that frustrating because the community was very concerned about the fact that construction was continuing. The government was very concerned about the increasing costs—while that construction was going on, that costs would continue. But I understand that this is politics, and that's part of the dynamic, and—

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. I will pass on now to Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. In our documents, document 6, the eighth page in, is a June 16 email. It's actually labelled down at the bottom as page 1 of that email chain. Do you have that?

**Ms. Alicia Johnston:** Document 6, page—

**Mr. Victor Fedeli:** The eighth page in. It's labelled number 1 down at the bottom. It's a June 16 email. Okay?

**Ms. Alicia Johnston:** I have got the email. Thank you.

1010

**Mr. Victor Fedeli:** I'm sorry?

**Ms. Alicia Johnston:** Thank you.

**Mr. Victor Fedeli:** Okay, so, "For sure. I think you've said this, but just want to be clear that the whole plant isn't going to be reviewed...."

Back on June 2011, three months before the election, it's clear that the Ministry of Energy has absolutely no plans to cancel or relocate the plant, let alone conduct any kind of a review. Is this why we understand now that the decision was purely a political decision, because, obviously, from an energy perspective, it is not going to be reviewed? Is that the understanding?



**Ms. Alicia Johnston:** Thanks for your question. I am trying to figure out the timeline in which this is—

**Mr. Victor Fedeli:** This is three months before the election. The Ministry of Energy is saying, “We’re not reviewing the decision on the plant.” Three months later—

**Ms. Alicia Johnston:** Which plant are we talking about?

**Mr. Victor Fedeli:** This is Mississauga. Three months later, the plant is cancelled. So if it wasn’t going to be reviewed and you were continuing with the construction and three months later it was cancelled, would you admit now that that is why it was considered to be, by the Premier and others, here, under oath, purely a political decision?

**Ms. Alicia Johnston:** I see from these emails that this is not something that I’ve written and that I’m just copied on these emails. Is that the case?

**Mr. Victor Fedeli:** You understand from this email that the plant is not going to be reviewed. Construction is going ahead. Do you understand that from this email?

**Ms. Alicia Johnston:** I understand that there’s an exchange back and forth. I believe at the time, in June, that was when the plant had started to move along. The government thought that it was not proceeding—was under that impression. The community thought it was not proceeding—

**Mr. Victor Fedeli:** Back in June, it says that the plant isn’t going to be reviewed. They understood it was proceeding, back in June. In fact, it was under construction.

**Ms. Alicia Johnston:** I believe news stories started to come out in early June. If you look two pages before in your documents, there’s actually a story here from Rob Ferguson—

**Mr. Victor Fedeli:** Yes, we were going to get to that later. I’m talking about the political decision. I’m asking you: You were part of that campaign team when this political decision was made. Who made the call to pull the plug 11 days before the election?

**Ms. Alicia Johnston:** On the Mississauga gas plant relocating?

**Mr. Victor Fedeli:** Yes, we’re talking about Mississauga.

**Ms. Alicia Johnston:** The Premier.

**Mr. Victor Fedeli:** Okay. Was Don Guy involved in that decision?

**Ms. Alicia Johnston:** In our party it’s elected officials who make decisions that are of that importance. Certainly, there are individuals who provide advice, but the Premier—

**Mr. Victor Fedeli:** So what were the campaign manager, Don Guy, Dave Gene and Kathleen Wynne’s roles in the day-to-day operation of the campaign, then? What specifically were their roles?

**Ms. Alicia Johnston:** They all had different roles on the campaign.

**Mr. Victor Fedeli:** That’s your answer? Don Guy told us he was the organizer of the media event. Do you feel

that that’s a correct answer? You told us earlier that it was a local event.

**Ms. Alicia Johnston:** If Mr. Guy saw himself as that, then I have no reason to dispute him.

**Mr. Victor Fedeli:** Would they have consulted then-Premier McGuinty on his decision to cancel the Mississauga gas plant?

**Ms. Alicia Johnston:** I’m sorry, would who have consulted the Premier?

**Mr. Victor Fedeli:** Don Guy, Dave Gene.

**Ms. Alicia Johnston:** I believe it was the Premier who made the decision.

**Mr. Victor Fedeli:** The fact is, on June 16 there was going to be no review; the project was proceeding despite the community resistance. Let me ask you a very simple question, then: Which party sited the plant in Mississauga?

**Ms. Alicia Johnston:** I don’t believe any of the political parties are involved in siting the plants. I believe that the Ontario Power Authority would have been responsible for that, and probably the Ministry of the Environment, to an extent.

**Mr. Victor Fedeli:** And which party sited the plant in Oakville?

**Ms. Alicia Johnston:** If you’re asking me which party was in government at the time, it would have been the Liberal Party.

**Mr. Victor Fedeli:** So the Liberal Party sited the plant? The Liberal government sited the plant in Oakville?

**Ms. Alicia Johnston:** I believe it was the Ontario Power Authority that sited it.

**Mr. Victor Fedeli:** Do you know what year the Ontario Power Authority was created?

**Ms. Alicia Johnston:** It’s a good question.

**Mr. Victor Fedeli:** And do you know the year that the decision was made to site the plant in Oakville?

**Ms. Alicia Johnston:** You probably know the answer to that better than I do.

**Mr. Victor Fedeli:** I really do. You should check that before you answer that it was the Ontario Power Authority that sited the plant there, okay?

Let’s talk about Mississauga again. The Liberal government sited the plant in Oakville and the Liberal government sited the plant in Mississauga. I want to thank Mr. Delaney for bringing up the fact that the PCs and the NDP are indeed on the record as being opposed to that. Neither party—I know I can speak for our party—would have sited it there in the first place.

When the decision was made to cancel the Oakville plant, another decision was made to locate the plant in Napanee. You’re heavily involved in discussion to site the plant in Cambridge. What happened there? It was all set. You had press releases written. You were ready to make an announcement in Cambridge. What happened?

**Ms. Alicia Johnston:** I’d just like to clarify that—you said I was heavily involved in decision-making. I just wanted to be clear about what my role was.



**Mr. Victor Fedeli:** We understand your role. What happened in Oakville? Why did the plant not end up in Cambridge? It's all put to bed. You've written a question-and-answer. You've got the mayor onside. You say it suited the energy needs. What happened? How did it end up 250 kilometres away, at great expense, in Napanee?

**Ms. Alicia Johnston:** You look like you're pointing to some documents, and I—

**Mr. Victor Fedeli:** No, I'm just asking. You know you were ready to go to Cambridge. What happened? Why didn't you end up in Cambridge?

**Ms. Alicia Johnston:** I was never part of any negotiations or conversations with Cambridge or any other community. That simply was not part of my job.

**Mr. Victor Fedeli:** So somebody told you one day, "Stop the presses. Don't release your information. We're not going to Cambridge." You didn't ask anybody, "Gee, I've done a lot of work here to prepare for the Cambridge announcement, and now you're not making it." You didn't ask anybody why it's not going to Cambridge?

**Ms. Alicia Johnston:** I think somebody else is probably better equipped to answer those questions. You're referring to documents about Cambridge, and I—

**Mr. Victor Fedeli:** I have to admit that your reputation here preceded you. Your reputation says you're a pretty effective operative, yet you can't answer basic questions here. I'm quite surprised at that today. I have to say that to you.

You were heavily involved in the pre-announcement to get everything ready to announce you're moving to Cambridge, and you don't go to Cambridge. You don't have any—is it no recollection or no understanding or no knowledge of why you didn't go to Cambridge, who pulled the plug?

**Ms. Alicia Johnston:** Well, Mr. Fedeli, I'm sorry to disappoint you that I'm not as impressive as you'd hoped, but as far as—you sound like you're referring to some documents. You're speaking notionally about Cambridge, Napanee—

**Mr. Victor Fedeli:** I'm not speaking notionally. It's document 5. You're involved in this messaging. You're moving to Cambridge. It's going to be new supply. It's all set; it's ready to go. The mayor's onside.

**Ms. Alicia Johnston:** Right.

**Mr. Victor Fedeli:** Somebody's talking to the mayor here; there are notes about that. Why didn't it go to Cambridge? What happened?

**Ms. Alicia Johnston:** That's a question that you should address elsewhere.

**Mr. Victor Fedeli:** But I'm asking you. You used to work at the Ministry of Energy, and then you worked at the Premier's office.

**Ms. Alicia Johnston:** I remember at the time that the government did want to relocate the plant—

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Ms. Alicia Johnston:** —and that we did not want to cancel it outright, that that wouldn't have been in the best

interests of taxpayers on the cost side of things. I would love to be helpful in answering your specific questions about why it didn't go to Cambridge. I don't have that information for you. I'm sure that some others would be happy to provide it. My involvement on any announcement would be to prepare documents for announcements, and perhaps I was involved in those at that time. I was involved in numerous announcements. It was a busy time with the long-term energy plan. The clean energy benefit was coming out, and I know that took a great deal of my energies at that point.

**Mr. Victor Fedeli:** Well, I'm quite surprised today that you are able to not answer so many questions, especially about moving to Cambridge—250 kilometres away—the sole-sourced deals with Napanee and Lambton, adding a couple of hundred million dollars in transmission—

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Mr. Fedeli. I am sorry; I will have to interrupt you. Time is up.

We'll go to Mr. Tabuns, I believe.

**Mr. Peter Tabuns:** Ms. Johnston, in the fall of 2010, who was managing the cancellation of the Oakville gas plant? Was it the OPA, the ministry or the Premier's office? Who were you following on this?

**Ms. Alicia Johnston:** I appreciate the opportunity to speak to that—

**Mr. Peter Tabuns:** I don't need that part. Who were you following?

**Ms. Alicia Johnston:** I'm just trying to be polite, sir.

**Mr. Peter Tabuns:** You can drop that.

1020

**Ms. Alicia Johnston:** Okay. It would have been a collaborative process, like all announcements would and should be. So we would have worked—and I believe that the records that we've just looked at today show that we worked—collaboratively with the Ontario Power Authority, as well as the Premier's office. So that would have been all three. I don't believe there were any other ministries involved. Sometimes environment—

**Mr. Peter Tabuns:** And was any one of the three leading?

**Ms. Alicia Johnston:** That's a fair question for you to ask. I think the Ministry of Energy was making the announcements. I certainly felt like it was our responsibility to coordinate and ensure that people were in the loop and that information was being gathered.

**Mr. Peter Tabuns:** Fine. You were in the Premier's office working on communications when the settlement was announced with TransCanada on the Oakville plant. Correct?

**Ms. Alicia Johnston:** Can you say that again? I just want to make sure I understand your question.

**Mr. Peter Tabuns:** You were working in the Premier's office when the announcement was made on the settlement of the Oakville plant?

**Ms. Alicia Johnston:** When was that?

**Mr. Peter Tabuns:** In 2012. When did you leave again?



**Ms. Alicia Johnston:** I left at the end of 2011, beginning of 2012, so that would have happened after.

**Mr. Peter Tabuns:** That's fine. How closely did you work with Jesse Kulendran?

**Ms. Alicia Johnston:** Jesse, as I mentioned earlier, worked in the deputy minister's office during my time at energy. I think she had other roles before and after that. She had an important coordinating function for the deputy minister. I can't recall her specific job title. I don't believe she was the EA, but I'm sure you can check the records. She and a number of other Ministry of Energy staff, we worked closely with.

**Mr. Peter Tabuns:** Tell me again when you left the Office of the Premier.

**Ms. Alicia Johnston:** The beginning of January 2012 was when I left.

**Mr. Peter Tabuns:** So you had left before the estimates committee; you left before the settlement with the Mississauga plant.

**Ms. Alicia Johnston:** That's correct.

**Mr. Peter Tabuns:** Who was managing the communications response—the gas plants issue and the Premier's office—when you were there?

**Ms. Alicia Johnston:** What particular time? I had two different roles when I was in the Premier's office.

**Mr. Peter Tabuns:** I would say the fall of 2011 up until you left.

**Ms. Alicia Johnston:** Up until the election?

**Mr. Peter Tabuns:** Well, no. You were in the Premier's office after the election, so after the election up until the beginning of 2012.

**Ms. Alicia Johnston:** Right. There would have been a few of us. At that point in time, I was the executive director of communications, so I would have had some involvement and some role at that time.

**Mr. Peter Tabuns:** And what was your role? What was your title?

**Ms. Alicia Johnston:** I was executive director of communications for a few months.

**Mr. Peter Tabuns:** So a fairly substantial role. Were you managing the communications on the gas plant, given that you were the executive director of communications?

**Ms. Alicia Johnston:** I believe I addressed in my statement what my involvement would have been at that time. You'll recall that following the election the construction was continuing—

**Mr. Peter Tabuns:** Yes, I do.

**Ms. Alicia Johnston:** —at the site, so most of our communication was around reassuring local constituents that, in fact, the Ontario Liberal Party, or, rather, the Ontario Liberal government, was going to see through that commitment. So that was most of our communications at the time.

There were—as you'll also remember, Mr. Tabuns; I'm sure you had them as well—lots of questions about when the construction was going to stop, if we were going to relocate it, where it was going to be relocated to. During that time period, we didn't have a lot of answers

to those questions yet, and those, as you know, would come later, most of them after I'd left Queen's Park.

**Mr. Peter Tabuns:** And at one point, you were asking Sean Mullin what was going on with all of this?

**Ms. Alicia Johnston:** Do you have a specific document you want me to have a look at?

**Mr. Peter Tabuns:** I'm just double-checking. No, I don't have that document in front of me at the moment.

**Ms. Alicia Johnston:** Okay.

**Mr. Peter Tabuns:** Did you consult regularly with Sean Mullin on the state of things?

**Ms. Alicia Johnston:** I would consult regularly with Sean and others in the Premier's office when I was at energy. He wasn't my direct contact. I wasn't working in policy; I was working in communications. But I found him and others helpful if I had questions or needed thoughts on something.

**Mr. Peter Tabuns:** Okay.

**Ms. Alicia Johnston:** I enjoyed working with Sean.

**Mr. Peter Tabuns:** Document 9, in fact: You refer in this document, third email from the bottom, "I'm worried the Star is going to be a disaster and we can't wait until then." That's waiting for a briefing from energy. Why did you think the report in the Star was going to be a disaster?

**Ms. Alicia Johnston:** It was probably not unusual for me at the time to be worried about challenging media coverage. This is from June 2011, before the election, and this is an email exchange with me and a couple of others. I was director of issues management at the time, so part of my job would have been to—if something came up in a scrum or in preparation for question period, I'd need to be aware of an issue and provide advice to the Premier or help prepare him for question period or one of his media avails.

I think at this time, in early June, it first started to be an issue in the community. The government was under the impression—well, just nothing had moved forward. I don't want to speak on behalf of the government but I was certainly under the impression that this gas plant was not moving forward. Nothing had happened for years on it. The community certainly thought it was dead, so I believe that in early June—June 3, it looks like—this was probably me seeing it for the first time and thinking, "Wow, this could move forward and this is going to have implications for the community and for the government." I was probably trying to find out information. It looks like I'm asking for more information here.

**Mr. Peter Tabuns:** You are. Craig MacLennan asked Jon Feairs and Dan Levitan to bring you up to speed as soon as possible. What did they say to you?

**Ms. Alicia Johnston:** I wouldn't be able to tell you specifically what they told me at that time. They're individuals I would have spoken to regularly about a whole number of issues, but I imagine they would have brought me up to speed on whatever the state it was at that point. It looks like I said I thought that the gas plant was in force majeure and they probably told me it wasn't and

that the company was getting financing together, which I think they eventually did and—

**Mr. Peter Tabuns:** They already had it. They were starting into construction.

**Ms. Alicia Johnston:** There you go. That's what I would have been concerned about.

**Mr. Peter Tabuns:** You're following up something that's a real shock to you.

**Ms. Alicia Johnston:** I was surprised, yes, to be honest, Mr. Tabuns. I was surprised because—

**Mr. Peter Tabuns:** Yes: "I thought it was in force majeure. I hear it's not." When they talked to you, what did they say? "It's not in force majeure. Have a nice day"?

**Ms. Alicia Johnston:** No. I'm sure we had a longer conversation than that.

**Mr. Peter Tabuns:** As am I, so I would appreciate knowing.

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Ms. Alicia Johnston:** I don't think it would have been a particularly exciting conversation except to provide me with the facts. I likely would have taken those facts and relayed them to others about where we're at, probably in the morning, the briefing to get ready for the day. I would have brought folks up to speed. I probably would have seen that article in the Toronto Star and—

**Mr. Peter Tabuns:** And did they say they were looking at different ways of holding up the plant?

**Ms. Alicia Johnston:** I would guess not; they would not have said that. Likely at this stage, we would have been simply trying to find out what the facts were and basically find out the state of the nation before we moved forward.

**Mr. Peter Tabuns:** Were you aware prior to the election that Mississauga was going to be cancelled or could be cancelled?

**Ms. Alicia Johnston:** I was not aware of the decision to cancel it until I was informed about it during the campaign.

**Mr. Peter Tabuns:** And was there any pre-election discussion about the cost of changing your minds on Mississauga?

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Mr. Tabuns. I'm sorry; the question will have to remain unanswered. We'll move to Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. Ms. Johnston, just before we get going, I've noticed in some of the questions you've been asked that history continues to change. Just to clarify, in both Oakville and Mississauga, the Ministry of Energy in 2004 issued calls for proposals for power generation in what it called the southwest GTA. However, in both cases, it was the company that chose the site—TransCanada Energy in Oakville and Greenfield Power in Mississauga. In both cases, they had to choose sites that had been zoned by the municipality as industrial or, in the case of Mississauga, industrial/power plant. This system has clearly worked in the past, but obviously did not work in Mississauga and

Oakville, which is why we're actually reviewing the siting process to ensure that things like this don't happen again.

1030

We've confirmed that you had left Queen's Park months before either deal was finalized, but again, from your experience, I want to talk a little bit about the OPA. What was your office's working relationship like with the Ontario Power Authority?

**Ms. Alicia Johnston:** I appreciate the question. I'm not sure if you have anything specific in mind. I think, generally, I and our office would work well with most of our energy agencies, including the Ontario Power Authority. This was certainly a challenging issue that we dealt with, and generally, I found people to be helpful and forthcoming when I had questions. I'm not an energy expert, and I would have a lot of questions, and I would ask for a lot of clarification.

One thing I would say as an aside, if you'll allow me, is that I did find it quite challenging when I worked at the Ministry of Energy that numbers, on a whole variety of things, would change for a whole variety of reasons. There are very good reasons why numbers would change; I'm not speaking specifically to the gas plants in any way, because, as you know, the issues around cost happened after I left. But I know it's a matter that this committee is looking at, and I did find it challenging when I worked there.

**Mr. Bob Delaney:** So, let's talk a little bit about what the Ontario Power Authority would have provided to the Ontario Ministry of Energy. Would it have included such things as the costing of agreements as the OPA knew it at the time?

**Ms. Alicia Johnston:** I would expect so. I wasn't involved in discussing specific agreements. I never would have looked at them.

**Mr. Bob Delaney:** I understand. As a communications person, you're not a policy maker; you're the policy communicator.

When asked at this committee about the Mississauga costing, Colin Andersen, from the OPA, testified, "We did provide them with the numbers. That is what you would expect." In fact, an email from Mr. Andersen from July 2011 to the energy ministry office confirms that he provided them with the \$180-million figure for the sunk cost of relocating the Mississauga plant. Then, for Oakville, Colin Andersen told the committee, "It's true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized."

So based on your experience in communications and in working with the numbers provided to you by the OPA, does it make sense to you that, when the finalized deals were announced, it was the costing done by the OPA that was provided to the public?

**Ms. Alicia Johnston:** I think the OPA would have been the appropriate folks to come up with the costing and to provide that to the minister at his request.



**Mr. Bob Delaney:** So for example, would the government or the ministry ever release a figure of any material importance without it first being fact-checked by the OPA?

**Ms. Alicia Johnston:** There were absolutely always fact-checking policies in place. Oftentimes, individuals—not necessarily myself—would go back and double-check, confirm and ensure that numbers were still accurate and that all the vigour that was necessary would go into determining those. That's needed, because politicians—you folks—are out there speaking on the record and being held to account for what you say, so we would rely on others for information, as we should. That was the case, I think.

**Mr. Bob Delaney:** So as the emails and the testimony provided to the committee show, the numbers given to the committee by the Ontario Power Authority were, in fact, made public. After the Auditor General reported on Mississauga, our government invited the Ontario Power Authority to come to the committee and answer questions about the Oakville costs using the auditor's analysis as a guide. At that time, they provided us with two new cost estimates—admittedly, this is after you had left—and we believe that the complexity and changing OPA estimates justify Ontario's decision to wait for the Auditor General's report on Oakville. Would that have been consistent with the practices that you would have followed during the time you were in the Ministry of Energy?

**Ms. Alicia Johnston:** It sounds reasonable.

**Mr. Bob Delaney:** Okay. A couple of questions about recordkeeping: Former Premier McGuinty had testified that there had been a lack of adequate training for staff in this area. In his June 7 response to the Information and Privacy Commissioner's report, he stated, "I agree with the commissioner that, despite some efforts, we did not devote adequate resources and attention to ensuring all government staff in all ministries and in the Premier's office were fully informed of their responsibilities."

"This inadequate training has made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated."

Does that square with your recollection that there was a lack of formal training with regard to how to properly manage the different classes of records you may have kept?

**Ms. Alicia Johnston:** Yes, I would say that his description is accurate to my experience.

**Mr. Bob Delaney:** Okay. That being said, I'm sure it was apparent to most staff that you weren't required to keep every single record. I'm just going to give you a couple of examples. The Archives and Recordkeeping Act explains transitory records are not required to be kept. The common records series defines these records as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an

immediate and minor transaction or the preparation of a subsequent record."

When we asked Secretary Wallace about his personal experience with transitory records, he told us, "from the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant."

Do Secretary Wallace's comments about transitory records make sense to you?

**Ms. Alicia Johnston:** Yes, they sound reasonable.

**Mr. Bob Delaney:** According to the act, there are many types of records that would fall into this transitory category—for example, duplicates, records of short-term value, intermediate records and draft documents. In fact, Archives Ontario even has a fact sheet entitled *The Fine Art of Destruction: Weeding Out Transitory Records*.

I want to ask you in particular about duplicate records. When we asked Peter Wallace about them, he confirmed there is no need to retain records held by another branch of government, and this includes materials prepared by Cabinet Office for a meeting with the Premier or, in fact, with the cabinet.

I would expect that a lot of what you received in the minister's or the Premier's office, given that you were not in a policy-making role but in a communications role, might have been—

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Mr. Bob Delaney:** —duplicates or materials provided to you on a for-your-information basis.

**Ms. Alicia Johnston:** Yes. In the work that I did on the communications front, I'd receive a lot of media stories, Google alerts and whatnot. I can't imagine that those would have been particularly useful to any other folks in the future. That was a big chunk of the types of emails that I would certainly receive.

**Mr. Bob Delaney:** And indeed, if you had emailed yourself something that was later incorporated into a larger document, that record you emailed to yourself would have been the definition of something transitory.

**Ms. Alicia Johnston:** Yes, I think that's fair to say. If you're speaking specifically to the email that Mr. Fedeli brought up earlier, this record was kept and was part of the public record. Qs&As are drafted for a press release—

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Ms. Johnston, for appearing before our committee this morning.

**Ms. Alicia Johnston:** Thank you, Madam Chair.

**The Vice-Chair (Mrs. Laura Albanese):** You may now be released.

We're going to take a quick recess—

**Mr. Victor Fedeli:** Chair, before we recess, I just want to say that when I asked if the documents were



deleted—because we did not get an answer, I will be submitting a motion looking for all of Ms. Johnston's emails from 2010 to the day that she left the government.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you for that. We will be recessing for five to 10 minutes. We'll be back after with our next witness.

*The committee recessed from 1040 to 1051.*

MR. GEORGE VEGH

**The Vice-Chair (Mrs. Laura Albanese):** We are back. Our next witness is Mr. George Vegh of the McCarthy Tétrault law firm, head of Toronto energy regulatory practice and adjunct professor of energy regulation at University of Toronto and Osgoode Hall law schools. Good morning, and welcome to our committee. We will ask our able Clerk to affirm you.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. George Vegh:** I do.

**The Vice-Chair (Mrs. Laura Albanese):** You may start with a five-minute presentation to the committee, and that will be followed by questions in rotation to each party of 20 minutes and then further questions of 10 minutes. Please go ahead.

**Mr. George Vegh:** Thank you, Madam Vice-Chair, and thank you to the committee for providing me with the opportunity to contribute to your deliberations and discussions.

I understand I have the opportunity to make a brief opening statement, so I thought I would just take a couple of minutes to make an observation on one component of your mandate, which is to make recommendations concerning planning and procurement of energy resources. I'd like to speak on this particular issue because it is something that I am more familiar with as a regulatory person, both teaching and practising in the area of energy regulation.

Specifically, I'd like to pick up on a recommendation that the ISO and the OPA addressed in their report and I understand that Mr. Campbell addressed in his discussion with your committee. That has to do with a longer-term approach to planning and procurement, which tries to move away from centralized planning and procurement towards alternative methods of planning and procurement, whether through load-serving entities or capacity markets or some other manner. I think that this recommendation has a lot to commend itself and I think that following this sort of approach would bring Ontario more into the mainstream throughout North America.

Ontario's approach of centralized planning and procurement is unique to Ontario. Largely, it was driven by the need to replace the coal-fired facilities, which were being taken out of service—which was an extraordinary goal, and you could say that extraordinary times called for extraordinary measures. But now that we are in a pos-

ition of surplus, and certainly the coal facilities have been replaced, it's perhaps a good time to reflect upon new ways of planning and procurement. As I said, the recommendation in the IESO/OPA report on regional planning has, I think, some important ideas.

Essentially, the movement away from central planning and procurement involves government setting goals and standards and outcomes for energy supply, but not choosing specific technologies or specific locations. It's more of an outcome-based approach, with a focus on the ends of policy, not the means of the technology or the facilities.

So that's really all I have to say as an opening statement, and I'm pleased to answer questions on that matter or any other matter within my knowledge.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Mr. Vegh. We'll now turn it over to Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair, and good morning, sir. Thank you very much for being here. As you may know, Mr. Vegh, part of the mandate of the committee is to provide recommendations on how we can improve the siting process for large-scale energy projects, something you just mentioned a moment ago. The reason that we've asked you here is because, very frankly, you've had a distinguished career as a lawyer and as an academic specializing in energy issues. In fact, you're considered one of Canada's foremost experts on energy regulation.

I wonder if you could tell us a little bit more about your career, particularly as chair of the Ontario Energy Association and as general counsel of the Ontario Energy Board.

**Mr. George Vegh:** Sure; thank you. I was general counsel of the Ontario Energy Board from 2004 to the end of 2006. That was when the energy board was made a self-funding organization, and so they needed to establish a legal department, a secretariat's office. It was my only real experience in public service, and I enjoyed it quite a bit. It was an interesting and important time at the OEB. As I say, I was there from early 2004 till late 2006.

When I left the Ontario Energy Board, I went back to private practice to McCarthy Tétrault, where I now am.

As you mentioned, I serve on the Ontario Energy Association board of directors. I was chair of that board, I think, from 2008 to 2009. The Ontario Energy Association, as I'm sure you are aware, represents the broad range of participants in the energy sector, including generators, distributors, transmitters, contractors, and lawyers and consultants, which is where I fit in.

**Mr. Bob Delaney:** Okay. At McCarthy Tétrault, what sort of cases do you handle? Are there any particular issues that you specialize in?

**Mr. George Vegh:** Well, I practise entirely in the energy regulation area. A lot of the files right now deal with some of the issues we're seeing around operability of the system and integrating renewable power.

I've worked with the IESO. They retained me to chair an industry task force that looked for solutions to inte-



grate the market into some of the new challenges respecting operability etc. that come from renewable power and other issues around, say, surplus baseload. That was an industry-wide forum that produced a number of recommendations that I'm pleased to see are being implemented by the IESO.

**Mr. Bob Delaney:** You've done a fair amount of writing, and you've been a speaker relating to Ontario's energy sector. Could you tell me some of the topics you've addressed in some of the papers that you've written and some of the public appearances that you've made—without taking the entire 20 minutes?

**Mr. George Vegh:** Sure. I do like to write on energy regulatory issues. I find that regulation, while it gets a lot of attention in the United States, gets less academic or intellectual interest here in Canada, so I do try to contribute. Recently I've written on issues around LDC consolidation. I'm currently working on a piece around the new long-term energy plan. I'm very interested in electricity planning issues and institutional arrangements around that, and that fits into my course work as well. Just next week, I'm starting another course on energy regulation where we're looking at siting as one of the particular topics that are now topical and of interest to students, I think.

**Mr. Bob Delaney:** Okay. So let's get into the main course of it, then: speaking about the implications of power generation and supply mix decisions. Can you comment on how the transmission and distribution situation in Ontario has changed over the last decade and specifically talk a little bit about the reliability of the system today compared with 10 years ago?

**Mr. George Vegh:** I could address that at a general level. I'm not an engineer, but I have worked on some planning issues. I think the challenge facing the sector 10 years ago, of course, was that we had nuclear facilities that were out of service and had to be brought back into service, and, of course, the decision to phase out the coal facilities. That left us in a situation where there were prospective reliability concerns on a going-forward basis, and as I said in my opening statement, there was a need for the government to step in and to have a very aggressive and centrally controlled procurement policy.

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In today's environment, we're facing a different set of challenges. We have the challenge of surplus baseload generation and the challenge to bring some flexibility back into the system. As I said in my opening statement, I think the challenges of today are different than the challenges when our current institutional arrangements were put in place. We certainly don't face reliability issues resulting from a shortage of supply, and even our surplus issues don't cause reliability problems; more than that, they cause some economic efficiency issues and some transparency issues. It's a different set of issues that we're facing now.

**Mr. Bob Delaney:** Okay. Bruce Campbell from the IESO, whom I'm sure you've met numerous times, talked about the changes in the energy system over the

past few years. He talked about the effect that phasing out coal has had on the system. He explained that coal is being replaced by investments in gas plants, wind and solar. By way of background, as he described it, "What we've been doing is putting in place the tools and learning how to operate a very differently configured system, one that we can operate just as reliably but one that is very differently configured from what had been the practice for many years—and very low-carbon."

Could you perhaps expand on that? From your experience, how has the system had to adapt as a result of the phase-out of coal, and what challenges and opportunities have been created with new sources of electricity supply?

**Mr. George Vegh:** Sure. Well, I think that as Mr. Campbell—who's very knowledgeable in this area—described, coal, for all its environmental flaws, was a very flexible source of supply in the system; that is, it could go on and off as required on fairly short notice. When you take that source of flexibility out of the system, you have to replace it with other ways, and that's a challenge facing Ontario.

It's a challenge facing other jurisdictions who have moved away from coal and have less reliance on fossil fuels more generally, and that creates a supply portfolio that is less flexible. You have nuclear facilities and you have wind facilities which simply don't have the maneuverability that coal does, so you need new ways to address that. Obviously, gas-fired generation does have maneuverability; I understand that it's not as flexible as coal, but it's more flexible than the remainder of the fleet. So Ontario, like other jurisdictions, has had to find new ways to bring in flexibility to the system.

Sources of flexibility into the system now are being reviewed that hadn't been considered before. Those would include demand response as an important way to have greater customer engagement, so that customer load shifting becomes a source of flexibility on the system. The role of imports and exports can become a role of flexibility on the system. The role of storage can be a source of flexibility—that is, withdrawing power at times of excess supply and injecting it back onto the system when the power is needed. All of these three types of flexibility—and others will emerge as well, I'm sure, through smart grid technologies—will compete amongst each other for different ways to contribute to that flexibility need.

**Mr. Bob Delaney:** Okay. Have you participated at all in any of the discussions on the long-term energy plan?

**Mr. George Vegh:** I haven't in a formal way. I've advised clients, certainly, on the long-term energy plan.

**Mr. Bob Delaney:** Okay. What type of input or feedback would you have for the Ministry of Energy in terms of the makeup of our energy supply? To be a little bit more specific, do you think that a diverse mix, including conservation programming, is important for the mixture in the system? What role, for example, would you see natural gas playing within that? Perhaps you might be willing to expand a little bit.



**Mr. George Vegh:** Sure. Well, as I said in the opening statement, all of the different resources have a contribution to make. I think that if I were to make a recommendation, it would be, actually, to back off a little bit and not be so prescriptive on the government choosing which technologies should play which role. I think that central planning carries with it a number of challenges in all sectors of the economy where it has been attempted. Really, government is not, I think, the best suited to choose which technologies ought to operate at which times. I think other jurisdictions in North America have found more flexible ways to deal with that, to deal with ways to ensure environmental standards are being met, social objectives are being met, without having the government choose what type of technologies ought to operate and in what capacity.

**Mr. Bob Delaney:** Okay. To move to a couple of questions on public input: Some of the main feedback we heard from witnesses who had come from Mississauga and Oakville is that there could have been, and perhaps should have been, a better consultation process with local residents from the very outset of the siting process.

From your experience, what role either can or should the province play in engaging with local communities to better support energy infrastructure siting? Who might be the best agency: the proponent, the cities, the OPA? What are your recommendations for more effective ways to engage with people affected by the siting of energy infrastructure, and are public consultations enough? That's a wide enough menu. Just go at it any way you wish.

**Mr. George Vegh:** All right; thank you. As I said, in the report of the IESO and the OPA on planning and siting recommendations, they did suggest consideration of an alternative model of load-serving entities, which really brings the issue of meeting supply requirements to a very local level. The load-serving entity could be a local LDC; it could be contracted out; it could be another entity. But their job is to meet supply requirements in a way that meets community needs, that meets reliability needs. It moves the decisions, really, away from the central planners back down to a more consumer-focused area.

You would expect a load-serving entity to be more responsive to customer needs as they change on a local basis. I think that there's obviously a role for municipalities in that regard, and the regional planning and the local planning—that seems to be a big focus right now—to really identify what those needs are. But I think once the needs are identified, there's probably less of a role for the central agencies, I believe, in trying to meet that need, and I think that that need could be met in a more decentralized way.

**Mr. Bob Delaney:** A lot of the technology that we deal with is pretty much a century old, and a technology that's less than a generation old—information technology—has probably done a better job in teaching people about its terms and units of measure than electricity providers have: kilowatt hours and megawatts of generation

as opposed to gigabytes of data and the definition of bandwidth.

How might we engage ordinary Ontarians to better understand what energy is all about, other than looking at the bill at the end of the month and wondering if it's better or worse, higher or lower, more or less reliable? Do you have any thoughts on that?

**Mr. George Vegh:** In my own view, I don't know how necessary it is for people to become very sophisticated in their understanding of energy technology. When you think of how people use technology in other forms you mentioned—bandwidth for Internet or for cell coverage—people know enough to make comparisons in the market as to what's available. They might not know how the information or the intelligence carries through the wires, and I don't really think they probably need to know that.

If you can make energy more of a consumer-based focus, then I think consumers are likely to kind of reflect their decisions by voting with their feet for different types of supplies. Some people may be quite interested in environmental impacts; other people might be more interested in cost; others may be more interested in having some control over their use of electricity. I think that a diversity of choices is probably valuable, like we see in other forms of technology.

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**Mr. Bob Delaney:** All right. I want to touch on a legal question here. Among several points that have been touched on from the Ontario Power Authority and the Independent Electricity System Operator is the role of municipalities and how the municipalities can be better engaged in the siting process. In particular, some of the reports I've seen suggest a disconnect between provincial planning and local planning. For example, in Mississauga, there were several versions of the official city plan that had the site chosen by the firm promoting the Mississauga gas plant, Greenfield. It was zoned industrial/power plant, and, similarly, a site that clearly should not have been so zoned had been zoned years ago by Oakville.

I'd be very interested in hearing some of your thoughts about the responsibilities and duties of municipalities with regard to planning local energy infrastructure and particularly in the context of the Planning Act and the Ministry of Municipal Affairs and Housing's provincial policy statement. Do you have any thoughts you could share?

**Mr. George Vegh:** I don't have a lot of expertise in those particular pieces of legislation, but I think it is clear that municipalities are in a position to take a larger role in this, and there does seem to have been a disconnect in previous planning exercises between municipal goals and electricity goals, and they shouldn't be that difficult to reconcile.

I think municipalities do deal with a lot of infrastructure needs, obviously, in their areas. They deal with waste; they deal with water. So to treat electricity infra-



structure like other forms of infrastructure, I think, would be to normalize the treatment of electricity infrastructure.

I think, again, the idea in 2004-05 when the OPA was created was that you needed a central planner to procure electricity capacity and energy on a very aggressive basis because of the state of the energy infrastructure at the time, and it was very aggressive. It identified a lot of resources and it acquired a lot of power. But now we're in a position where I don't think the urgency is there, and you can normalize electricity infrastructure a little more, treat it like other forms of infrastructure where, of course, municipalities take a very large role.

**Mr. Bob Delaney:** Okay. Three what I hope are concise, closed-ended questions: Do you think municipalities should have a say in trade-off decisions between generation- and transmission-based solutions?

**Mr. George Vegh:** I think local communities should be involved in those trade-offs.

**Mr. Bob Delaney:** Do municipalities—and I realize this is kind of a sweeping statement—have the resources and expertise to make such a complex decision?

**Mr. George Vegh:** Well, we do have energy agencies that should be sources of information. Even if they're not, as I say, I'm not sure they should be as controlling as the current system is. It's complex information, but municipalities deal with complex information, and I think that the key role of the agencies should be to provide clear information on the trade-offs that would have to be made, and municipalities should be able to absorb that information and act on it.

**Mr. Bob Delaney:** Should individual municipalities have the ability to veto energy infrastructure siting decisions?

**Mr. George Vegh:** I think that if you try to put plants in municipalities that are not willing communities—

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Mr. George Vegh:** —they, de facto, have a bit of a veto around that. I'm not sure whether you would take that out of the political process and move it into a legal veto, but, obviously, it works. The system works better when the municipalities are willing hosts.

**Mr. Bob Delaney:** Thanks, Chair. We'll pick up this line of questioning on our next round.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, and we'll move it to Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair, and thank you, Mr. Vegh, for being here. We appreciate you being here this morning.

In order to plan and to fix this whole siting of plants, we certainly need to understand what has happened that brought us to this point today. At this stage, we're still missing key data, and that is why I have a motion that we will be hearing at the end of the day that gives us all of the Ontario Power Authority and all of the Ministry of Energy's files from January 1, 2012, to this point in time. That's the real period of time where we will determine and where we will, for the first time, learn what actually

happened, how these plants got sited in the first place and how the new plants were chosen to be sited.

It's very difficult today to talk about how to site plants in the future when we don't really know at this stage what happened in the past. I would suggest to you that we will want to determine the past undertakings before we get to talking about how to correct them in the future. I'm looking forward to my motion hopefully passing this afternoon that will get us those missing data.

I'll ask you the same two questions I ask every witness who comes here—most every witness, I should say. Mr. Vegh, do you know how much it cost to cancel the Mississauga power plant and the Oakville power plant?

**Mr. George Vegh:** No, I don't.

**Mr. Victor Fedeli:** Do you have any information as to who ordered the cover-up of documents halting this committee from getting to the truth of what happened in Mississauga and Oakville?

**Mr. George Vegh:** I don't know anything about the information respecting that.

**Mr. Victor Fedeli:** Thank you very much. I appreciate that. Thank you, Chair.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Mr. Fedeli. Mr. Tabuns?

**Mr. Peter Tabuns:** Mr. Vegh, at any point did you do any consulting work for the government of Ontario on the closure of the Oakville or Mississauga plants?

**Mr. George Vegh:** No.

**Mr. Peter Tabuns:** Okay. Thank you. I have no further questions.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you so much, Mr. Tabuns. We're back with Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. I think my colleagues might want to have an early lunch.

Let's go back to where we were, then. Based on your suggestions, how might provincial legislation or regulations need to be amended to make some of the changes that you and I were talking about earlier?

**Mr. George Vegh:** Well, I'm not really sure that legislative changes are actually that necessary. The legislation, both the OEB Act and the Electricity Act, have pretty broad regulation-making authority and directive-making authority. For example, when we talk about an integrated power system plan, as I've said, I'm not a big fan of the government choosing a technological supply mix. There's nothing in the legislation which says that they're required to do that. They're just supposed to set objectives for the sector. I think that there is fairly broad authority under the current legislation. While you may have to tweak some things, I really don't think there will be a major legislative fix required to go in any different type of direction. I think the legislation has a lot of built-in flexibility right now.

**Mr. Bob Delaney:** Okay. Thanks. That's actually quite helpful.

You've written extensively on Ontario's energy agencies and regulators and also about the relationships between and among them. With that in mind, I'm wondering whether you have any recommendations on how



the different agencies, corporations and arm's-length bodies that interact with one another to produce energy in Ontario could work together to improve the siting process.

**Mr. George Vegh:** On the siting process, I think the IESO and the OPA have worked together to put together recommendations on how the siting process can change in a manner that incorporates greater earlier engagement and municipal participation. Those recommendations, I think, are reasonable ones.

I think when it comes to the agencies more generally, there's always a lot of talk about where the agencies should be going. I do think it would be helpful to have a good discussion, perhaps through your committee, on what is expected of these agencies and really what are the goals of the agencies. Once you identify the goals of the agencies, consider the agencies as more means to achieve those goals. If the main goal now is around siting issues, I think that that could be worked more clearly into their mandates, particularly the OPA.

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We've seen the OPA, in exercising its procurement functions, in exercising its planning functions, probably put less of a concern around local factors—municipal participation, engagement and approval—and I think the recommendations of the IESO/OPA report talk about the need for a different focus on planning: one that does take local concerns on siting into account.

**Mr. Bob Delaney:** Okay. I'd like to talk a little bit about the relationships between some of those agencies and other entities and municipalities. One of the issues in both Mississauga and Oakville was the fact that, years prior, the sites had been zoned industrial and, in the case of Mississauga, industrial/power plant. The call for proposals was made in the summer of 2004. Two proposals were accepted, and then the two proponents just dropped off the map for five to six years, suddenly reappearing in 2010, which gave rise to both municipalities going, "Whoa, whoa; stop. This isn't compatible with the growth in the community."

How can those Ontario agencies, working in conjunction with some input from local communities, best leverage ways to improve the siting of energy infrastructure, because that's really what went wrong here?

**Mr. George Vegh:** As I said, I think if there was a disconnect here—there's also a matter of timing. When you mentioned 2004, I think that was prior to the agencies really being set up. I think you had RFP processes run more by the ministry. That led to the granting of contracts, and I believe siting approval was required as part of the contracts. I don't really know what the facts were with those two specific locations, but perhaps a learning from that is that municipalities do need to be better informed about energy requirements in their area so that they can more proactively identify the types of resources that they'd be prepared to accept.

Again, if you had a different model where you didn't have to have such localized procurement—say, a load-serving entity, to pick up again on the recommendation in

the Mississauga area, would have the choice of where they get their supply from. Do they want to build it? Do they want to buy it? Do they want to use conservation? Do they want to use imports? Do they want to use demand-response or other forms of technology? Allowing some more options could be helpful, and the agencies perhaps can be a source of information about what those options are on a more proactive or more prospective basis.

**Mr. Bob Delaney:** Okay. So let's continue with that. Some people who've come here have talked about models they've seen elsewhere in the world. Are you aware of other regional, provincial or local infrastructure planning that may be in place in other jurisdictions that Ontario could learn from or emulate or adapt?

**Mr. George Vegh:** I'm not an expert on siting issues in other jurisdictions, but even with that, Ontario has built a huge amount of electricity infrastructure over the last 10 years. It's not surprising that if you consider a success rate of how much plant goes in the ground versus how much is planned for, I'm not sure that by international standards it's really that low. You might have had a couple of cases of high-profile, very strong resistance to facilities, but I don't think you'd find anywhere in the world where there are no challenges, no pushback and no cancellations. Certainly across the United States, whenever there has been a goal to have greater reliance on wind, for example, you have resistance to transmission lines and you have resistance to siting issues for turbines. I think that's a natural part of the tension and balance that goes into building infrastructure. I'm not sure empirically you could say that Ontario has done that much worse than anybody else on the siting issue itself.

**Mr. Bob Delaney:** Okay. An open-ended question for the last bit of time that we have here this morning: Is there any other advice that you'd like to provide to the committee as we improve the process behind siting energy infrastructure? Are there any specific steps that the government or municipalities or agencies might take going forward?

**Mr. George Vegh:** As I said in the opening statement, I think some of the longer-term issues or proposals put forward by the IESO and the OPA with respect to load-serving entities and capacity markets as a way to mitigate against or remove the necessity for central planning and procurement should be taken quite seriously.

I'm not saying this committee will go there, but there's often a tendency to bring in more and more layers of complexities, approvals, participation and process, and I'm not sure that that is really the remedy to having things done on a more effective basis. I think if I were to have one piece of advice, it would be to try to simplify the processes we now have and incorporate more local responsibility for these decisions.

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Mr. Bob Delaney:** Okay. Any final comments for us?

**Mr. George Vegh:** That's it. Thank you.



**Mr. Bob Delaney:** All right. Well, I want to thank you very much, Mr. Vegh. I really enjoyed your insights, and I think the committee will benefit from your expertise. I want to thank you for taking the time to come and see us today.

**Mr. George Vegh:** Thank you.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Mr. Vegh, for appearing before our committee—

*Interjection.*

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Fedeli, I don't know if you have any further questions.

**Mr. Victor Fedeli:** Thank you very much, Chair. I appreciate it.

Again, Mr. Vegh, I really appreciate the time that you spent here today. We would look forward to chatting with you in the future, once we understand how we got to where we are today. I'm quite certain your guidance would help us look at future plans, but what we really need to know at this point is, how did we get where we are at this point? Thank you very kindly for being here.

**Mr. George Vegh:** Thank you.

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Tabuns?

**Mr. Peter Tabuns:** I'd like to thank you as well for being here today. I have no further questions. Thank you.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. You are now released.

The committee is recessed until—

**Mr. Victor Fedeli:** Chair? We've got 35 minutes before the lunch hour. Is it possible to deal with a couple of the motions that are outstanding and save some time at the end of the day?

**The Vice-Chair (Mrs. Laura Albanese):** That's up to the committee. Is there agreement on that?

**Mr. Bob Delaney:** I'd prefer to do it at the end of the day, to be honest.

**Mr. Victor Fedeli:** Are you rushing for lunch?

**Mr. Bob Delaney:** Touché.

**Mr. Victor Fedeli:** We've got a half hour here that's scheduled time. There are just two quick motions. They're just looking for emails. We can get them out of the way.

**The Vice-Chair (Mrs. Laura Albanese):** That's up to the committee.

**Mr. Peter Tabuns:** Why don't we proceed?

**Ms. Catherine Fife:** Let's move ahead.

**The Vice-Chair (Mrs. Laura Albanese):** The majority says to proceed, and we shall.

We'll deal with Mr. Fedeli's motion first, the one that was reserved. That has been deemed in order. Everyone has a copy. Are there any comments, any debate?

**Mr. Victor Fedeli:** Do I read the motion?

**The Clerk of the Committee (Ms. Tamara Pomanski):** Sure.

**The Vice-Chair (Mrs. Laura Albanese):** Yes, as a refresher.

**Mr. Victor Fedeli:** I move that the Standing Committee on Justice Policy request from the Ministry of Energy, Minister of Energy and the Ontario Power Au-

thority all documentation and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants sent, received or generated between January 1, 2012, and August 20, 2013; that search terms include any and all proxy names or code names including but not limited to Project Vapor, Project Vapour, Project Vapor Lock, Project Vapour Lock, Oakville project, Mississauga project, Oakville gas plant, Mississauga gas plant, TransCanada, TCE, Project Apple, Project Banana, Project Fruit Salad; that the documents be provided to the committee no later than September 10, 2013; and that the documents be provided in an electronic, searchable PDF.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Mr. Fedeli.

Any debate? Mr. Delaney.

**Mr. Bob Delaney:** I do have some clarification questions around this, Chair. I am making the assumption that in making this request, correspondence pertaining to this committee is not included. In other words, you're making a request whose date overlaps the start date of this committee, and I'm assuming, Mr. Fedeli, you are not asking for documents that relate to the proceedings in this committee but relate solely to the cancellation and relocation of the plants. Is that correct?

**Mr. Victor Fedeli:** May I answer, Chair?

**The Vice-Chair (Mrs. Laura Albanese):** You may.

**Mr. Victor Fedeli:** I think the request and the motion speaks for itself: all documents between January 1, 2012, and August 20, 2013, that include those search terms.

**The Vice-Chair (Mrs. Laura Albanese):** And—

**Mr. Bob Delaney:** I would, then—

**Mr. Joe Dickson:** That didn't answer the question.

**Mr. Bob Delaney:** No, that didn't actually answer my question, Chair. I would like to have a ruling from the Chair—and you may wish to take some time on this—about whether or not members can request documents and correspondence relating to the operation of this committee, because Mr. Fedeli has been unclear on this, and I think we have to be very clear on it.

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**The Vice-Chair (Mrs. Laura Albanese):** It will have to be related to the mandate of the committee. The Chair will not rule hypothetically on the appropriateness of documents provided to a committee. Should any respondent require clarification on a request or on the mandate of the committee, I would encourage them to seek that clarification prior to responding. That is the advice I am receiving.

**Mr. Bob Delaney:** I would like, then, to be very clear on that. The government has no objection with providing material that responds to the mandate of the committee. Indeed, much of what's been requested here has already been provided, and the only material change seems to be to move the end date to last week. I'm not exactly sure what documents written last week are going to contribute to the mandate of the committee, but, be that as it may, the one thing I want to make very clear is whether or not the request includes documents created pursuant

specifically to the operations of this committee. I would like to get a very clear answer on that.

**The Vice-Chair (Mrs. Laura Albanese):** I am being advised that if they are outside of the mandate of the committee, they are not responsive.

**Mr. Bob Delaney:** Okay. That's a very clear answer on it.

Now, the other point I'd like to get clarification on from Mr. Fedeli is: If documents requested are duplications, do you want the same thing all over again?

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you. It is our contention that we do not have all of the documents from January 1, 2012, to August 20, 2013, from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority, so I would say that the motion stands. I'm quite satisfied with the motion that was accepted by the Clerks; it will stand the way it is.

**Mr. Bob Delaney:** So again, I need to get some clarification on that. If a document has previously been provided pursuant to a previous undertaking, must it be provided again? That's a yes or a no.

**The Vice-Chair (Mrs. Laura Albanese):** Yes.

**Mr. Bob Delaney:** Okay. I would also like to get direction from the author of the motion. Does the author grant discretion to the ministry to do such things as removing recipes for fruitcake, banana bread and other things that are very clearly trivial?

**Mr. Victor Fedeli:** I would suggest to you that the motion will stand worded the way it is. This is no different than motions we've had in the past, the week before, the week before, the week before that and the week before that.

**Mr. Bob Delaney:** So is that a "yes" that you want banana bread recipes, if such things accidentally contain responsive terms?

**Mr. Victor Fedeli:** May I comment, Chair?

**The Vice-Chair (Mrs. Laura Albanese):** You may.

**Mr. Victor Fedeli:** Look, we've seen the Liberals play fast and loose and kind of cute; when something says "vapour" or "V" instead of "Project Vapour," they didn't bother including it. Under that guidance that they've worked on in the past, we never would have seen a "banana bread," because it wasn't "Project Banana." If they were playing too cute by half, I would expect them to continue under their rulings, so I have no desire to answer that kind of question.

**The Vice-Chair (Mrs. Laura Albanese):** And the document, again, has to be responsive to the motion.

**Mr. Bob Delaney:** Okay. So we understand that documents will be provided if, indeed, they are responsive to the motion, but need not be provided if they are manifestly not responsive to the motion. Is that correct, Chair?

**The Vice-Chair (Mrs. Laura Albanese):** Agreed.

**Mr. Bob Delaney:** Okay. Chair, if there are no other comments, we would just like to request a five-minute recess.

**The Vice-Chair (Mrs. Laura Albanese):** I have Ms. Wong, who wants to add something.

**Ms. Soo Wong:** Thank you, Madam Chair. I just wanted to ask the mover of the motion, with regard to the timeline of this request, given that this is a long weekend, Madam Chair—this is asking for 20 months of emails or correspondence, dated back to January of last year to this year, as of last week. Can we look at it realistically in terms of the timeline? It's about two weeks from now. This is September 10 that you're asking for, Madam Chair, with regard to this motion—that we look at another realistic date, because this is asking staff over a long weekend. Next week is a short week, okay? So let's be reasonable to each other with this kind of request. I think myself, as a member of the government, that I don't see a problem getting this kind of request, but let's be respectful in terms of timeline and in terms of all the staff involved, making sure of the documents requested by the mover. So I'd like to see if there's any kind of flexibility in terms of the timeline of this request.

**The Vice-Chair (Mrs. Laura Albanese):** The question is directed to the author of the motion.

**Mr. Victor Fedeli:** Thank you, Chair. When I brought this motion up a week ago, that would have given three weeks, and it was a reserved decision. I said at that time that this was the day after we come back from our summer break. If they weren't prepared to pass my motion, to accept my motion, when I originally asked for it, I had no intentions back then of changing the due date, so I think everybody was pretty much aware that this date was coming. It was discussed widely a week ago. I have no intention at the moment, unless we have a broad consensus, to change it, but I made it very clear last week when we brought this motion that three weeks was plenty of time.

**The Vice-Chair (Mrs. Laura Albanese):** And an amendment could be moved to the motion if one so wishes.

**Mr. Bob Delaney:** Thank you, Chair. We would need a few minutes to draft such an amendment.

**The Vice-Chair (Mrs. Laura Albanese):** Okay. The committee will recess for five minutes.

*The committee recessed from 1137 to 1155.*

**The Vice-Chair (Mrs. Laura Albanese):** Welcome back. We have, I believe, an amendment that needs to be moved.

**Mr. Bob Delaney:** Thank you, Chair. I move that Mr. Fedeli's motion be amended as follows: that the wording "no later than September 10, 2013," be removed and replaced with "as soon as possible."

**The Vice-Chair (Mrs. Laura Albanese):** Any discussion?

**Mr. Victor Fedeli:** Chair, considering that we're looking for this document on the Tuesday after we return from the long weekend, and the comment from Ms. Wong was about the long weekend, I would certainly be prepared to move the date to the Thursday of that week, giving them an additional two days. The committee meets again on Thursday the 12th, and I would look for some flexibility so that we could give them a couple of extra days. This is the same group, Chair, that put an



election on the eve of a long weekend. If it seems okay to do that, it would certainly seem more than practical to be able to find our documents by Thursday the 12th.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comments? Mr. Delaney.

**Mr. Bob Delaney:** Chair, the reason for this is that when the motion was reserved last week, it was not through any action by the Ministry of Energy. It is not fair to penalize the Ministry of Energy for a decision—a correct decision, I think—by the Chair and the Clerk's office to reserve decision to study the implications of the motion.

Secondly, many witnesses—among them the secretary of cabinet and many deputy ministers—have testified that these motions are very time- and resource-consuming. What the amendment asks is to simply be reasonable.

Thirdly, these are the same documents offered by the government way back in March, that the committee, in its wisdom, voted against.

Finally, if the opposition votes against this amendment, they are very clearly setting up the public service to fail. I would urge, Chair, that the members support the amendment. There has never been an issue with the government providing the documents requested, but what the amendment asks is that they be reasonable in giving the ministry the time to produce the documents.

**The Vice-Chair (Mrs. Laura Albanese):** Further debate? Yes, Mr. Fedeli?

**Mr. Victor Fedeli:** Thank you. We do know, as well, that the Auditor General's report is coming out very soon. It may come out as early as the 9th of September, before this, and if it is a little bit later than that—days later than that—I think that having this information in advance will be critical to us.

I'll ask the member across: When the auditor was last here on the Mississauga release, he said that the Liberal government was given the draft report six to eight weeks in advance. Would you be able to tell me now: Does your government have a draft report of the Auditor General's report?

**Mr. Bob Delaney:** All I know is that the draft report is still in the process of being prepared.

**Mr. Victor Fedeli:** Do you have a copy, or does your government have a copy?

**Mr. Bob Delaney:** I don't have a copy of it. I've had no discussion, and—

**Mr. Victor Fedeli:** No, I understand you don't, but does the Liberal Party or does the Premier have a copy of the Auditor General's report today?

**Mr. Bob Delaney:** The Auditor General doesn't share any of his findings with our party.

**Mr. Victor Fedeli:** The Auditor General told us last time that he did share it with the Premier six to eight weeks in advance.

**The Vice-Chair (Mrs. Laura Albanese):** I would encourage everyone to speak to the amendment.

**Mr. Victor Fedeli:** I'm getting to that point. Is this to delay it until the Auditor General's report is out? That's

really where I'm going with this. Is the Auditor General's—

**Mr. Bob Delaney:** Chair, we don't have the report. We're waiting for the report as well. We do not have the report.

**Mr. Victor Fedeli:** You miss my point. Does the Premier have the draft report from the Auditor General?

**Mr. Bob Delaney:** I would have no way of knowing that. To my knowledge, we do not have the report and the Auditor General's staff is still in the process of preparing the report.

**Mr. Victor Fedeli:** That we're going to receive in September.

**Mr. Bob Delaney:** That we'll receive when the Auditor General tables it. I don't have a date at which the—

**Mr. Victor Fedeli:** Chair, I'm prepared to go to the 12th. Thursday the 12th is the date that we can see it being done by.

**The Vice-Chair (Mrs. Laura Albanese):** Okay. We'll need to vote on the amendment as it stands now before we propose any different date. All those in favour of the amendment, please raise your hand. Those opposed? The amendment is lost.

**Mr. Victor Fedeli:** I would be willing to put a friendly amendment on my own motion to change from September 10 to September 12. Do I need to do—in a friendly amendment?

**The Vice-Chair (Mrs. Laura Albanese):** I'm advised that that's fine. So the motion would read, "no later than September 12."

We have to vote on the amendment, I am advised.

**Mr. Victor Fedeli:** You can't accept it as a friendly amendment to my own motion?

**The Vice-Chair (Mrs. Laura Albanese):** Can it be accepted as a friendly amendment to the original motion?

*Interjection.*

**The Vice-Chair (Mrs. Laura Albanese):** No. We'll have to vote on the amendment.

**Mr. Victor Fedeli:** Okay. Then I move that as an amended motion.

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Fedeli has moved it as an amended motion. Any discussion or debate? Mr. Delaney?

**Mr. Bob Delaney:** Well, Chair, it comes back to the point that I made earlier. Whether it reads September 10 or September 12, the scale, the scope and the degree of difficulty of the undertaking requested is simply not possible in that time span. All that the ministry has asked is for a reasonable time to produce documents requested by the committee. What the motion asks is, very frankly, an unreasonable amount of time. I say that backed up by the testimony of many of the witnesses who have come before us to talk about the degree of difficulty and how time-consuming and resource-intensive these document searches are.

I asked earlier whether or not Mr. Fedeli would agree to forgo obvious duplicates of existing records; he indicated he wasn't. So this is going to be a huge, huge

undertaking, and a date of September 10 or September 12 is simply not possible in the time that the motion asks for.

**The Vice-Chair (Mrs. Laura Albanese):** Further comments?

**Mr. Victor Fedeli:** Chair, I did not comment on the duplicates; I think that instruction comes from the Clerk, and I think the Clerk's office is fairly clear on duplicates.

**The Vice-Chair (Mrs. Laura Albanese):** Okay. Further debate on that?

**Mr. Bob Delaney:** Just one final comment, then, Chair. If this is what we're going to vote on, whether it reads September 10, September 12 or tomorrow morning, the effect is the same: It does not offer the Ministry of Energy sufficient time to do proper due diligence to comply with the motion to produce all of the documents that respond to the motion, but only the documents that respond to the motion. We ask, then, that the motion be defeated. We would be pleased to support an alternate motion that does offer the ministry sufficient time to do the work asked for it.

**The Vice-Chair (Mrs. Laura Albanese):** Any further discussion on that? All those in favour of the amendment? Opposed? Okay. I declare the amendment carried.

Shall the main motion, as amended, carry? All those in favour? Opposed? Carried, as amended.

Now our committee will recess until one o'clock. Thank you.

*The committee recessed from 1204 to 1303.*

#### MR. KEVIN SPAFFORD

**The Vice-Chair (Mrs. Laura Albanese):** We're back in session. We have our next witness before us: Mr. Kevin Spafford. Welcome to the Standing Committee on Justice Policy. I will ask now our Clerk to affirm you.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Kevin Spafford:** I do.

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Spafford, you have up to five minutes for an opening statement. That will be followed by questioning, 20 minutes, by the NDP, and then the Liberals and then the PCs, 20 minutes each, and then another round of 10 minutes per party. I shall hand it over to Mr. Tabuns—oh no, the opening statement first. Please go ahead.

**Mr. Kevin Spafford:** Thank you. Good afternoon. I'm pleased to be here today. As the Chair mentioned, my name is Kevin Spafford. I believe you have my bio in front of you, and I don't want to take any time reviewing that. I would like to be as helpful to the committee as I can be, and with that I'll take your questions.

**The Vice-Chair (Mrs. Laura Albanese):** Okay. Then, Mr. Tabuns—or Ms. Fife.

**Ms. Catherine Fife:** Good afternoon. Thank you, Mr. Spafford, for coming to the committee today.

**Mr. Kevin Spafford:** No problem. You can call me Kevin.

**Ms. Catherine Fife:** All right, Kevin. Welcome to the committee.

Today, actually, we're going to be following some questioning that had to do with some of the messaging that came out. In your document package—I assume you have it?

**Mr. Kevin Spafford:** I do.

**Ms. Catherine Fife:** You do. On page 2 of that document, around the communications plan, you mention in the July 4, 2012, note on page 2, you say that the goals are to “successfully manage the timing and manner of release of the documents so as to limit the negative communications/issues management impact on the government.” Can you give us some insight as to what your objective was with that statement?

**Mr. Kevin Spafford:** Sure. Let me first say that, I think that, if you look two pages previous to that, you'll note that the memo is from David Phillips, who you spoke to last week.

**Ms. Catherine Fife:** Yes.

**Mr. Kevin Spafford:** He says, “I've attached a memo that Spaf and I drafted up re options for release of Vapour/Vapour-lock documents to estimates committee—for our 5:00 p.m. meeting.” The memo is ultimately the authorship of David Phillips; I did contribute.

I think it's important to outline my role for you. I think that will be helpful, to understand what my contribution to this memo was. I advised the House leader and the chief of staff to the House leader on the operations of the government and the Legislature, implementing the government's legislative agenda, as well as advising on parliamentary procedure.

In terms of contributing to a memo, my role was to contribute parliamentary procedure and the technical aspects of the memo. I don't have anything further to what David Phillips has suggested about the part of the memo you're talking about.

**Ms. Catherine Fife:** Okay, but the original email does say, Kevin, that it was you and he—David Phillips—who drafted up these options. So you were part of drafting up this strategy around dealing with this issue, right?

**Mr. Kevin Spafford:** I think, if you can understand that we did have an office of people, and I was involved in the drafting of this memo. But it also does outline some proposed terms for negotiating and how that would take place on the floor of the House and in committee. That's what my role was in the office.

**Ms. Catherine Fife:** Yes, and I'm sure that you also understand that because it says that it was you and he who drafted up these options, that's why we're going to ask you some of the questions about that document.

So when you do say that you want to “successfully manage the timing and manner of release of the documents,” shouldn't your objective have been to comply with the order from the estimates committee?

**Mr. Kevin Spafford:** I think if you look through the documents that were provided to the committee—I did



have an opportunity to look through some of them; obviously, they're pretty comprehensive—you would see that, from the very beginning, the government's objective was to respect the right of the committee to request documents. But the position of the government and the position of the Minister of Energy was one that was formed by looking at expert opinions and past parliamentary procedure. Other factors were taken into consideration. There were competing interests that the government and the minister believed needed to be taken into consideration. That's what formed the basis of the position.

**Ms. Catherine Fife:** So that's what you take away from this "managing the timing ... of the documents"? I think it's fair to say that it does seem, on the surface, that the government was more interested in "communications/issues management" than the rights of the committee, than getting the committee the information that they needed. Even today, we're still trying to get information at this justice committee.

What is more important, the government's communications issues or the rights of the committee to get the information that they need?

**Mr. Kevin Spafford:** Well, I do have to disagree with your assessment, Ms. Fife. I don't agree that communications took priority over other factors. I think that if you look through the documents that were provided—some of my documents—we went to great lengths to review the parliamentary procedure involved. That's what I can speak to; that was my role. I'm happy to take questions about anything you'd like to ask me about, but my role was to look at the parliamentary procedure and to help advise on that. I think it's clear that we did our due diligence in looking through past procedure and issues such as the Afghan detainee issue. We did do a full examination of that and spoke to people that were involved in that issue. That really formed a methodical approach that the government took in laying out the strategy.

**Ms. Catherine Fife:** So who gave the direction for this document to manage the issues? Who did you take direction from, if it wasn't Mr. Phillips?

**Mr. Kevin Spafford:** I haven't indicated it wasn't Mr. Phillips. I was under his direction.

**Ms. Catherine Fife:** So it was Mr. Phillips?

**Mr. Kevin Spafford:** Mr. Phillips was my chief of staff; I was directed by him. I also reported to the House leader, Minister Milloy. I understand that this memo was sent to the Premier's office, and I helped contribute to the procedural aspects of this memo.

**Ms. Catherine Fife:** So they gave you direction around managing the negative impact?

**Mr. Kevin Spafford:** They gave me direction around providing advice on the procedural impacts of the issue at play in the Legislature and committees.

**Ms. Catherine Fife:** Okay. So whose opinion was it that the committee should not be given the documents it requested in the time frame it set out? Could this direction have arisen without the approval of the Premier's office? Two parts.

**Mr. Kevin Spafford:** I have to disagree with your assessment that that was the position of the government.

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**Ms. Catherine Fife:** Perhaps you're looking at a different document.

**Mr. Kevin Spafford:** The position of the government from the very start was that there were competing interests at stake and that the committee had a right to request the documents but, based on parliamentary procedure, which forms the basis of how this place functions, that there were other competing interests at play which, in the past, had been reconciled. I think, in fact, if you look at the Speaker's ruling, he actually acknowledged that that was the case in giving the opposition and government House leaders a week to negotiate and reconcile those competing interests. It's really unfortunate that that didn't happen. I think that confirms that our opinion and the expert advice we were provided is that Parliament does have a right to ask for documents but, based on precedent, there's also an obligation to consider the other factors at play.

**Ms. Catherine Fife:** Are you looking at the Summary of Options and how to deal with the gas plants motion? Because if you look through this document, it's essentially a document that tries to navigate a way to not get the committee the information that they need.

Okay, I guess we'll respectfully disagree with each other, based on the information that's before us.

Can I ask you a question about going forward? Because you do list a number of strategies. It's a comprehensive document, really, to sort of, as I said, navigate through a very complex issue, looking forward, for the government at the time.

On page 2, you're trying to deal with all options around how this motion will proceed. You say, "Second, the motion could be lost if we (i) are able to successfully debate the motion through the 32 hours of summer hearings; (ii) prevent committees from sitting through early September as we negotiate the reconstitution of committees with the opposition"—I would look at those strategies as evasive ways of trying to not get the information to the committee—"and (iii) win the by-election in Kitchener-Waterloo by-election, such that we regain voting control of standing committees."

I guess my question for you is, what was your plan for the inquiry into the scandal if you had won a majority?

**Mr. Kevin Spafford:** I'm sorry. The plan for which inquiry?

**Ms. Catherine Fife:** To deal with the gas plant motion. We're still on the same document.

**Mr. Kevin Spafford:** Yes, so you're referring to the motion and the three tactics that are outlined.

**Ms. Catherine Fife:** That's right.

**Mr. Kevin Spafford:** But I don't understand how you're relating that to potential preparation for a future inquiry.

**Ms. Catherine Fife:** The question's actually very simple: If you had won a majority, would you have got



the estimates committee all the information that they requested?

**Mr. Kevin Spafford:** I think the Minister of Energy at the time—and I can't speculate on future Ministers of Energy. I understand that the documents were eventually provided. The minister's intention was always to release the documents in a way that protected the interests of taxpayers. That was always the intention that I understood from the Minister of Energy.

**Ms. Catherine Fife:** That was the direction that you got?

**Mr. Kevin Spafford:** The Minister of Energy provided clear direction, and testified at this committee that the direction was always to provide the committee with the information they wanted but to initiate a process of negotiation, that has been a hallmark of past legislative issues, where they come together—I would use the example of the public accounts committee here. The public accounts committee is reviewing the Ornge issue. They instituted a novel process where they came in camera to review certain documents where it may be a risk to the public if they were released.

There are numerous processes that could have been put into place—

**Ms. Catherine Fife:** I think those are two very different committees. But let's go back to strategic goals, still on page 2. Another strategic goal, you state, is to "reduce the risk—fiscal and otherwise—posed by the production of documents...." What does "otherwise" refer to, Kevin, if you can remember back?

**Mr. Kevin Spafford:** I certainly would have contributed to the procedural aspects of this document, but others would be more knowledgeable—David Phillips and otherwise—about the fiscal and other risks to the production of documents.

If I had to speculate, one of them is that in the Constitution, there's a protection for solicitor-client privilege, you may be aware, and that was another risk of producing these documents while ongoing litigation was occurring. If I had to speculate on "otherwise," I would say that might be one of them.

**Ms. Catherine Fife:** Okay, thank you, Kevin. My colleague Mr. Tabuns will take over.

**Mr. Peter Tabuns:** Mr. Spafford.

**Mr. Kevin Spafford:** Good afternoon, Mr. Tabuns.

**Mr. Peter Tabuns:** The document is interesting. My colleague has asked what would happen to this inquiry if you'd won a majority, and it's pretty clear that what you've reported out here is that this motion would not have gone forward. That was part of your strategy. Second, the motion could be lost if we won the by-election, and at no point in this document is there any suggestion that there would be any other inquiry. Your hope was that in winning the Kitchener–Waterloo by-election, you would have actually killed us off.

**Mr. Kevin Spafford:** Mr. Tabuns, I appreciate the question. I'm not in a position to speculate on all the permutations of this. I contributed my part to the memo, and others would be able to speak to those tactics. Again,

I'm happy to outline what my role was, and that was really to advise on—

**Mr. Peter Tabuns:** Can I just ask, though: In your discussions about this, did it ever come up that if, in fact, you won a majority, you would continue on with an inquiry into the gas plant scandal?

**Mr. Kevin Spafford:** To be honest, I can't remember having that discussion. My role in the office was to advise on parliamentary procedure. I was not privy to the larger discussions related to the by-election and those types of issues. I advised the House leader; I wasn't a member of the Premier's office.

**Mr. Peter Tabuns:** That's fine. Who requested this briefing note? When we look at who it was sent to: everyone in the office of the Premier, copied to you—

**Mr. Kevin Spafford:** I'm not sure. Perhaps there is a record of the original request that you could find, looking through the documents, but I don't have access to that anymore.

**Mr. Peter Tabuns:** So you were never told who this opinion was being drafted for?

**Mr. Kevin Spafford:** No, I didn't say that. I said that I'm not sure, and you could perhaps find out by looking through the documents. But, as I'm no longer in government, I don't have access to that.

**Mr. Peter Tabuns:** Just so I'm clear in my own thinking, you weren't aware at the time of who was asking for this?

**Mr. Kevin Spafford:** I may have been aware at the time, but, considering this was over a year ago, I'm not aware now.

**Mr. Peter Tabuns:** Is it your belief that this would have been used to brief the Premier?

**Mr. Kevin Spafford:** I'm not able to speculate on the process the Premier's office used to brief the Premier. I wasn't a member of the Premier's office; I was adviser to the government House leader.

**Mr. Peter Tabuns:** Who issued directions about the release of documents requested by the committee?

**Mr. Kevin Spafford:** The Minister of Energy.

**Mr. Peter Tabuns:** Who was making the final decision about document disclosure?

**Mr. Kevin Spafford:** Which document disclosure are you referring to?

**Mr. Peter Tabuns:** The disclosure of documents that we asked to be put before this committee.

**Mr. Kevin Spafford:** Would this be the Ministry of Energy, or the Ontario Power Authority's disclosure of documents?

**Mr. Peter Tabuns:** And who was making those decisions?

**Mr. Kevin Spafford:** About which one?

**Mr. Peter Tabuns:** The Ministry of Energy.

**Mr. Kevin Spafford:** The Minister of Energy.

**Mr. Peter Tabuns:** Himself. Okay.

**Mr. Kevin Spafford:** I believe, in consultation with the deputy minister. With regard to the Ontario Power Authority, I believe the CEO was the one who made the ultimate decision.



**Mr. Peter Tabuns:** Given how important these documents were, given what was at stake, would the Premier have been aware of this decision-making process? Did he have any role in the disclosure of decisions?

**Mr. Kevin Spafford:** I'm not sure. I wasn't privy to the discussions between the minister and the Premier or to cabinet decisions. I understand you've received a number of documents, maybe including cabinet records, so perhaps you could consult those to find out. But I wasn't privy to those conversations.

**Mr. Peter Tabuns:** So did the Premier know that documents were being withheld from the estimates committee when we were given our first round of documents?

**Mr. Kevin Spafford:** Sorry. Which documents are you referring to?

**Mr. Peter Tabuns:** If you remember, the Minister of Energy provided a number of documents to the estimates committee at the time, which were very deficient. They lacked large numbers of emails and other documents that were relevant to this matter. Would the Premier have been aware at the time?

**Mr. Kevin Spafford:** Again, I was not in a position to know that. My information came from being cc'd and contributing to an email which was—a memo was sent to the Premier's office, but I was not involved in the internal Premier's office process of briefing the Premier on any type of these matters.

**Mr. Peter Tabuns:** In this committee on June 18, Chris Morley stated, "It would have been entirely appropriate for them to be aware of any issue before the Legislature." That's referring to the Premier's office and referring to documents being withheld from the estimates committee. Do you have any reason to disagree with Mr. Morley?

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**Mr. Kevin Spafford:** No, I don't, considering that my boss, the chief of staff to the government House leader, was also the director of legislative affairs. I assume there would have been some process in place, but I'm not aware of what it was.

**Mr. Peter Tabuns:** Did you use the term "Vapour" in correspondence?

**Mr. Kevin Spafford:** I believe from the documents that you've received, there are a few cases in which I did. One is a meeting I attended with the title "Vapour," and potentially a few other pieces of correspondence with the word "Vapour" in it.

**Mr. Peter Tabuns:** So you received correspondence as well as using the term yourself.

**Mr. Kevin Spafford:** Whatever the committee has received with the word "Vapour" on it is what I would have received.

**Mr. Peter Tabuns:** The document you have there, document 1, is asking if you have any responsive records with the term "Vapour." Your response was, "I have no responsive records." Why did you say that?

**Mr. Kevin Spafford:** Mr. Tabuns, do you have the next page of this record? I believe the original email is cut off with the search parameters.

**Mr. Peter Tabuns:** No, I don't.

**Mr. Kevin Spafford:** I would have to be looking at the search parameters—

**Mr. Peter Tabuns:** I have your response: "I have no responsive records."

**Mr. Kevin Spafford:** But I don't see what the request is.

**Mr. Peter Tabuns:** It was with regard to Vapour, a freedom of information request.

**Mr. Kevin Spafford:** Sorry, what were the search terms?

**Mr. Peter Tabuns:** "Vapour."

**Mr. Kevin Spafford:** Do you have a copy of that? I don't want to speculate on something I'm not seeing.

**Mr. Peter Tabuns:** I don't have it in this package. We will try to get it for the next round.

**Mr. Kevin Spafford:** I'd be happy to answer the questions if I'm able to see the document that you're asking about.

**Mr. Peter Tabuns:** When you carried on your daily business with correspondence, did you keep records, as required by the Archives and Recordkeeping Act?

**Mr. Kevin Spafford:** I'm pleased to talk about my records management process. As you can see, you have, I believe, hundreds of my emails and documents that I was involved in producing. I did my best to maintain the records that were outlined as should be maintained and that I understood should be maintained. I think that's why you have hundreds of my records that were produced over this time period related to the gas plants inquiry.

**Mr. Peter Tabuns:** Were you in the room when Minister Duncan was answering questions in estimates on July 19, 2011?

**Mr. Kevin Spafford:** I honestly can't remember if I was in the room or if I was watching the live feed, but I would have been monitoring it.

**Mr. Peter Tabuns:** So one way or the other, you were aware of him speaking.

**Mr. Kevin Spafford:** Yes.

**Mr. Peter Tabuns:** Do you know how much he said it would cost to cancel the Mississauga gas plant?

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Mr. Kevin Spafford:** Can I assume, Mr. Tabuns, you're referring to an email from your package, which is a summary from me about the minister's appearance at estimates?

**Mr. Peter Tabuns:** Yes, number 3.

**Mr. Kevin Spafford:** Okay. From what I understand, there was mention of two figures. If I'm going by my summary here, I said "180 vs 190," and I believe I would have been referring to \$180 million, which was announced by the Minister of Energy. Then, if I recall properly, a couple of days subsequent to that, the Premier made a correction that there was an unrelated contract to the same firm which they were considering a part of that payment, which is the \$190 million. I believe Minister Duncan spoke to that in his estimates appearance.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. Sorry, the time is up.

I will now turn it over to Mr. Delaney.

**Mr. Bob Delaney:** Kevin, it's good to see you again.

**Mr. Kevin Spafford:** Good afternoon.

**Mr. Bob Delaney:** Just to confirm, then: Following the 2011 election and up until this February, you served as the manager of legislative affairs in the government House leader's office, right?

**Mr. Kevin Spafford:** Yes, but it was until January of this year.

**Mr. Bob Delaney:** January?

**Mr. Kevin Spafford:** Yes.

**Mr. Bob Delaney:** Okay. In that role, who did you report to?

**Mr. Kevin Spafford:** I reported directly to David Phillips, who spoke to you last week, who was the chief of staff to the government House leader and director of legislative affairs in the Office of the Premier. Ultimately, I reported to the government House leader, Minister John Milloy.

**Mr. Bob Delaney:** Just for clarity, did you play any role in the decisions to relocate the two gas plants or in the negotiations with TransCanada Energy and Greenfield to relocate them to willing host communities?

**Mr. Kevin Spafford:** No. At the time, I was working for the Minister of Health and Long-Term Care.

**Mr. Bob Delaney:** In the government House leader's office, was your work focused more on the legislative agenda, committees and in negotiations with the opposition?

**Mr. Kevin Spafford:** Yes. I'm happy to provide a bit of an overview to expand on what I said before. My role was really advising both the government House leader and the chief of staff to the government House leader, and it was mainly on the operations of the government in the Legislature and committees, implementing the government's legislative agenda. We had an ambitious agenda of government legislation that we wanted to pass. Part of my role in the office was tracking and managing those bills as they moved through, working with parliamentary assistants who were the leads on the files, and the representatives in the minister's office.

Another part of my role was advising on parliamentary procedure. I think, in the documents the committee received, it's evident I was involved in advising on points of privilege and other parliamentary issues that would have come up, and that was the main focus of my role.

**Mr. Bob Delaney:** Okay. I get that you didn't have a role in the relocation, that you didn't have a role in determining the costs of the relocation, so many of the rest of the questions I'll have for you will be kind of process-related.

In the role that you played, you would have had some unique insight into the legislative environment during that time period. I want to start by talking a little bit about then-Minister Bentley's appearance at the estimates committee.

On May 16, just to recap, Mr. Leone moved a motion for correspondence from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority regarding the two gas plants between one date and another date. At the time, sensitive commercial negotiations were ongoing with both companies.

In response, then-Minister Bentley wrote to the committee outlining that the motion was requesting documents subject to solicitor-client privilege and possibly litigation privilege. He warned that these documents were highly commercially sensitive, and Minister Bentley cautioned the committee that their release would impact ongoing negotiations.

Could you flesh out any other details regarding the issues raised by Mr. Bentley to the estimates committee in May of last year?

**Mr. Kevin Spafford:** Certainly. In my role of advising the House leader on the management of the Legislature and committees, I was involved in supporting Liberal members of the committee who were on the committee at the time and working with the minister's office, who were advising the Minister of Energy on his eventual response.

The Minister of Energy, based on his written letter and the issues they were going through, was concerned that there was really an issue with releasing the full set of documents without considering the other factors at play. You mentioned the commercial negotiations that were ongoing. I believe one of them was actually currently in litigation at the time, and so there were certainly broad issues about solicitor-client privilege that were at play.

I would have to say this was certainly a new context for everyone working inside government—the civil service and political staff—and I think William Bromm and others have testified to that fact, that everyone was sort of finding out information about this and trying to figure out exactly what the full context was in terms of parliamentary precedents.

For Minister Bentley, I think the consideration was that in every—certainly, the advice that was provided by experts was that the committee had a right to request information but, in fact, Parliaments and Legislatures would work with the minister, work with their colleagues, to go through the issues that are at play in terms of the protections on the information.

I mentioned before that the public accounts committee also used that tool to go in camera or use any other manner of tools. One other thing that informed Minister Bentley was that there was a federal issue with the Afghan detainee ruling, and the opposition at the time was looking to access documents about the Afghan detainee issue. There was a novel process put in place that was actually outside of the Legislature in which the opposition and government agreed to an expert panel of judges who came together and reviewed the documents and then eventually released documents that could be made public.



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That was an instrumental part, I believe, in the minister's decision. His hope was that he could work with the committee, in fact, to work out how these documents could be viewed in a way that protected the parts of the documents that could possibly compromise commercial sensitivity, which was certainly an issue.

There were certainly fiscal issues in terms of going through a negotiation. The government and taxpayers were on one side. The companies of the plants that were being relocated were on the other. To provide the companies that you're bargaining with on behalf of the taxpayers with the very information that you have at your disposal, I think, was certainly one of the prime factors that Minister Bentley had in consideration. If I had to speculate, as a lawyer himself, the solicitor-client privilege involved in an ongoing piece of legislation, which has protections in the Constitution, was another factor that should have been taken into consideration.

**Mr. Bob Delaney:** Okay, thank you. Bear with me, I've got a little bit of a preamble to the next one, which picks up where you left off.

At that time when the opposition was asking for commercially sensitive documents to be made public, we knew that the commitment to cancel the Mississauga plant had been made by all three parties during the immediately preceding 2011 election. Of course, shortly after re-election, our government announced its intention to relocate that facility. That decision caused the commencement of civil proceedings in both the province of Ontario and in the state of New York. Those lawsuits as well as the confidential settlement negotiations were ongoing when Mr. Leone moved his motion at estimates, which dovetails in what you've been saying.

Let's set up the next question. In terms of Oakville, again, all three parties supported the cancellation of that plant, and while no formal litigation resulted from the government's decision, the province and TransCanada Energy had been engaged in formal arbitration and confidential settlement discussions.

To tie that into what's been happening at the committee, we've had numerous independent witnesses testify here that had these documents been made public before the agreements were finalized, it would have greatly jeopardized the province's negotiating position.

Former secretary of cabinet Shelly Jamieson in fact had this to say, and I'll use her words: "It would have harmed the negotiations for sure. Nobody likes to negotiate and have all their paper about what they're talking about out before the conclusion of the deal. It's just not good practice in terms of negotiating a deal. Sometimes in our bid to publicly disclose things, we actually hurt ourselves."

To this, energy deputy minister Serge Imbrogno said, "We were being sued by EIG for ... \$300 million," and if they were able to get information that would have made their case stronger, it would have "put us at risk there. Again, negotiating with Greenfield," if they could have used this information to get leverage in negotiations, it

would have put us in a bad situation. "So, it's hard to quantify," but there were risks to the taxpayer.

When the Auditor General was here to testify, he acknowledged that similar issues arose when he testified in public accounts. He said he would be reluctant to put this type of information in the hands of the parties at that time. He also likened it to not wanting to tip your hand.

Do these expressions of concern mirror some of the concerns you yourself had or you were hearing at the time? Would you expand on it?

**Mr. Kevin Spafford:** Certainly. I'd say the Minister and Ministry of Energy and perhaps the Ministry of the Attorney General were really in the best position to advise on the fiscal risk and the risk to solicitor-client privilege. Those were risks that certainly were listed and flagged by both the Ministry of Energy and Ministry of the Attorney General, who were involved in those processes. I'm not an expert to be able to expand much on that.

What I would say is that—and I've alluded to this already—the government always took the approach that the committee did have the right to ask for the information, but that there is a process in place that past Legislatures and Parliaments have used to reconcile those concerns.

One of the things that I would point to back in that estimates committee is actually that the Chair at the time, Michael Prue, I believe, ruled—and I don't have it with me today—that the minister was under no obligation at the time to respond to the opposition's request. That was another element that certainly was in play with the minister in terms of trying to respond to the Chair, who was managing those files. I'm not sure if Mr. Prue has since changed his position on that ruling, but that was certainly something that impacted how Minister Bentley moved forward.

**Mr. Bob Delaney:** Dave Phillips wrote a memo on July 4, 2012, in which he emphasized there was a financial risk posed by the production of documents until there was a successful resolution of litigation and the other legal processes related to both of the gas plants. In every option, he lays out, depending on the outcome of these negotiations, that it's clear that the requested documents that were going to be provided to the committee in fact would be provided to the committee. In the words of Mr. Bentley when he testified before this committee, it was not a matter of if but when. In fact, the notion that there was an attempt to keep these documents hidden simply wasn't true at all. Will you comment on that?

**Mr. Kevin Spafford:** Yes, absolutely. I think from the get-go, Minister Bentley's approach was that the government really recognized the committee's right to request the information. As you've quoted from him, and I'll just paraphrase it again, it was really a matter of not if but when.

In terms of my role, perhaps, some light that I can shed for the committee is that while reviewing some of the Hansard from this committee, I did come across an interesting development. On three separate occasions, the



opposition referred to the fact that the committee was not presented with options to view the documents in camera. On March 7, from this committee on page JP16, Mr. Leone referred to the possibility of viewing the documents in camera and was asking former Speaker Milliken about that.

Further to that, on page JP191, Mr. Fedeli actually referred to the public accounts committee and the novel approach they had taken. He said, in his questioning of Craig MacLennan, "Was that not considered as an option for any of these documents?"

There's another example on April 9. Mr. Leone was asking about the range of potential options for considering the committee's request. Mr. MacLennan actually said, "I believe, from my recollection, going to sign the committee in to review the documents in camera was the second option, something that I believe we got as an idea from the Afghan detainees scenario where individuals, if I recall correctly, were almost sworn into cabinet for the day to review the documents.

"Mr. Rob Leone: So why was that option not presented to the committee?"

"Mr. Craig MacLennan: I thought it was.

"Mr. Rob Leone: It wasn't."

In fact, and I'm happy to provide this assistance to the committee today, those options were provided to the opposition parties on numerous occasions, and I'm glad that you do have those documents detailing how they were provided. It is disappointing that, unfortunately, those overtures were not taken up. That's all laid out in the documents in terms of the overtures that we made. I'm not sure where the disconnect was in terms of the meetings that I was in with the House leader with the other House leaders discussing those options. But if Mr. Leone and Mr. Fedeli don't believe they came to the committee, I think maybe that's an issue that the committee could take up for future issues like this, when there are real concerns at stake, and the committee needs to look at all the options presented.

The parliamentary convention, as I've mentioned, which forms the basis of how this House functions, stated that the committee would not request or would make an accommodation to protect information that could jeopardize the important legal privileges and the interests of Ontario taxpayers. The House and committees have a right to request the documents, but the precedent shows that, in each case of those requests, they've also made accommodations to protect sensitive information.

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The examples go through every single textbook that you can find on parliamentary procedure. Yes, the committee has the right to request the documents, but they also have an obligation, based on precedent, to consider the factors that the minister would put forward. It's really unfortunate that that didn't happen in this process, and I hope the committee will make some recommendations about how to move forward on using guidelines like that for future issues.

**Mr. Bob Delaney:** Okay. Thank you. Again, to be specific: As soon as the Mississauga relocation arrangement was finalized and all legal matters had been settled, I understand on July 10, the minister directed his ministry to provide the committee with all correspondence related to the Mississauga facility responsive to the motion, except those records subject to solicitor-client privilege. Now, there have been some suggestions that the minister, the ministry or somebody was trying to hide the documents; if so, why would he have asked for them to be released right after the settlement was reached? Can you speak to what was going on at that time?

**Mr. Kevin Spafford:** Yes. I think that's an important point that really shows that the minister was interested in producing the documents for the committee, but there were real issues at play. Once the issue of commercial sensitivity and the negotiation had concluded, he did make good on his promise that he had an intention to provide the documents, and he ended up providing those documents.

As I've outlined, there are issues with the protection of solicitor-client privilege. The Afghan detainee hearings took that into consideration. The panel that was set up with expert judges to review the information actually took that into consideration, and legislatures have done so in the past. That sets a precedent for looking into those issues, but the minister, as soon as the risk to Ontario taxpayers was mitigated by reaching the deal with that company, made good on his promise and released those documents.

**Mr. Bob Delaney:** And all of this happened weeks ahead of the Kitchener-Waterloo by-election, right?

**Mr. Kevin Spafford:** That's right. I believe it was early-to-mid-July.

**Mr. Bob Delaney:** So any suggestion between the minister's actions and the outcome of the K-W by-election has no basis in fact, correct?

**Mr. Kevin Spafford:** From my understanding. I don't have the dates in front of me, but it was much prior to, perhaps, even the writ being dropped. I don't have those dates with me today.

**Mr. Bob Delaney:** Okay. As negotiations carried on during the summer, I understand that the opposition criticized the government for—and I'll use their word—"filibustering" the estimates motion. They alleged that the strategy was employed to prevent them from ever receiving the documents. However, when we asked Mr. Phillips about it last week, he explained that amendments were moved and debated as a way to find a good solution that respected the rights of the members to these documents while, at the same time, protecting the public interest.

He said, "At the first stage of the estimates committee process, you saw a series of amendments being moved by the government that were designed to essentially find that middle ground"—

**The Vice-Chair (Mrs. Laura Albanese):** One minute.



**Mr. Bob Delaney:** —“and to find a way to get these documents out in a way that protected the sanctity of these negotiations and allow for a process to protect solicitor-client privilege.” What were you hoping to achieve with the introduction of the amendments and the negotiations with the opposition?

**The Vice-Chair (Mrs. Laura Albanese):** Thirty seconds.

**Mr. Kevin Spafford:** I appreciate that question. The amendments that the government members chose to move at the time were really based on protecting the important protections that were at risk here. They were moved in committee by the Liberal committee members, and there was a desire to have a real debate and real acknowledgement that there were other issues at play here: as we discussed, ongoing commercial negotiation, solicitor-client privilege. The minister had referred to those in his letter as being necessary for protection.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you very much for that answer. I will now turn it over to Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair.

Certainly, your revisionist history is something that we'll visit ourselves in a few minutes. I did want to get to our document 1, which is being handed out to you here. It actually picks up on where Mr. Tabuns left off. He asked you a very simple question: Did you use the word “Vapour”? He's not asking you about documents that were turned over or weren't turned over with “Vapour.” He asked you a question which you have not yet answered: Did you use the word “Vapour” in any of your correspondence?

**Mr. Kevin Spafford:** Thanks for the question, Mr. Fedeli. Sorry, which document are you referring to?

**Mr. Victor Fedeli:** Document 1. We'll get to the document in a moment, but what I'm referring to is Mr. Tabuns's question to you—a very simple question. Did you use the word “Vapour”? He's not asking about, did you turn documents over.

So did you use the word “Vapour”?

**Mr. Kevin Spafford:** Thanks. I actually have to go back to the premise of your question because I disagree with it—

**Mr. Victor Fedeli:** It's a simple premise: Did you use the word “Vapour” in your correspondence?

**Mr. Kevin Spafford:** It is a simple premise. I believe it is incorrect because you said that I did not acknowledge using the word “Vapour”—

**Mr. Victor Fedeli:** No, no; you did not answer his question. He asked you a question—

**Mr. Kevin Spafford:** I don't know if Hansard can repeat it for us. I did say—

**Mr. Victor Fedeli:** They can't do that. He asked you a question: Did you use the word “Vapour”? You went on to talking about documents that were turned over. That's not what he asked you. Well, I'm asking you this question, then: Did you use the word “Vapour”?

**Mr. Kevin Spafford:** Thanks, Mr. Fedeli. I appreciate the question—

**Mr. Victor Fedeli:** Just answer the question, please.

**The Vice-Chair (Mrs. Laura Albanese):** One at a time, please.

**Mr. Kevin Spafford:** Thanks. I'm happy to answer all of your questions—

**Mr. Victor Fedeli:** But please get to it.

**Mr. Kevin Spafford:** I will absolutely get to it.

**Mr. Victor Fedeli:** I only have 20 minutes. Please get to the answer. Did you use the word “Vapour”?

**Mr. Kevin Spafford:** And as soon as I'm provided the opportunity to answer, I will answer your question.

**Mr. Victor Fedeli:** Oh, here we go; another one.

**Mr. Kevin Spafford:** As I told Mr. Tabuns, yes, I did use the word “Vapour,” and that's already been clearly reflected in—

**Mr. Victor Fedeli:** Thank you. Let's get to document 1 of 1, in the second page. You responded to the freedom-of-information, when they asked you for the request, “I have no responsive records.” If you look at page 2, they're simply asking you for “emails, memoranda, Outlook calendar invitations making reference to ‘Project Vapour’ or ‘Project Vapor’”—spelled without a “u”—“during the calendar years of 2010, 2011 and 2012,” and you tell freedom-of-information, in writing, “I have no responsive records.”

Can you tell us how that can possibly be, when you just finished saying that you used the words “Project Vapour” in correspondence?

**Mr. Kevin Spafford:** Certainly I'd be happy to, Mr. Fedeli. Actually, you didn't ask me if I used the words “Project Vapour”; you asked me if I used the word “Vapour.” I think there is a difference.

The email you're referring to—and I'll read the sentence: “access to the following information from the Office of the Premier: emails, memoranda, Outlook calendar invitations making reference to ‘Project Vapour’”—

**Mr. Victor Fedeli:** You don't have to repeat it; I've already read it.

**Mr. Kevin Spafford:** —“or ‘Project Vapor’”—spelled without the “u”—“during the calendar years of 2010, 2011 and 2012.” Your question to me is, did I use the word “Vapour”? The instructions provided by the Ontario public service for that search were to type in the words, in quotation marks here, “Project Vapour” or “Project Vapor.”

**Mr. Victor Fedeli:** So you're being cute because you have invitations to meetings on “Vapour,” but because the words “Project Vapour” weren't there, you think you're excused from that. Is that what you're saying?

**Mr. Kevin Spafford:** Let me say that—

**Mr. Victor Fedeli:** Is that what you're saying?

**Mr. Kevin Spafford:** I'll tell you what I'm saying, Mr. Fedeli. I don't believe it's the role of political staff to assume what a requester wants to get access to. In my opinion, that's not the role of a political staff member—

**Mr. Victor Fedeli:** So to you, the 1,000 files that we have where you've got the word “Vapour”—

**Mr. Kevin Spafford:** I'm not done, and I would appreciate it if I could finish my statement. Thank you.

I believe it's the role of the non-partial Ontario public service to maintain the FOI rules, and that's what I continue to believe. There were no records based on the search terms that I'd been provided.

**Mr. Victor Fedeli:** So you're sticking to that—because the word “Vapour” is here and it doesn't have “Project Vapour”? You're sticking to that, that that's why you didn't turn any documents over, why you told freedom-of-information, “I have nothing. I'm not involved in this. I have no records”—because the word “project” wasn't included? That's what you're saying today?

**Mr. Kevin Spafford:** That's my understanding.

**Mr. Victor Fedeli:** Brilliant. Brilliant. So we can understand from you—was that the philosophy taken by other people within your office, to snub their noses at the committee's request, knowing fully well what was requested? Is that your request?

**Mr. Kevin Spafford:** I can't speak to anyone else, and I don't believe this was a committee request; this was a freedom-of-information request, unless you're referring to a different request.

**Mr. Victor Fedeli:** Were there any other freedom-of-information requests that you said “I have no responsive records” to?

**Mr. Kevin Spafford:** I'm sure there were. I don't have them on me at the moment. I'd be happy to answer questions about any that you have received.

**Mr. Victor Fedeli:** So that's what it is. “You did not write the word”; you did not look for any Vapour files or anything that had anything to do with Vapour. You were all cute by calling it “Project V” sometimes, hoping that maybe we'd never know what Project V was. Is that what you're telling me?

**Mr. Kevin Spafford:** I'm sorry, where did I refer to it as Project V?

**Mr. Victor Fedeli:** I'm just saying, you being the Premier's office and those—I'll call you Liberal operatives—you resorted to calling it “V.” Were you one of the ones that resorted to calling it “V”?

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**Mr. Kevin Spafford:** Mr. Fedeli, I can only speak for myself. I don't recall calling it Project V. If you have a record showing that, I'd be happy to speak to it.

**Mr. Victor Fedeli:** So you think the fact that you have invitations here in your Outlook calendar that invite you to a meeting on Vapour, you don't have to turn that document over. That's what you're telling us.

**Mr. Kevin Spafford:** Those are the instructions from the Ontario public service.

**Mr. Victor Fedeli:** And who, precisely, gave you that instruction not to turn any files that say “Vapour” over?

**Mr. Kevin Spafford:** I'm happy to review the instructions provided by the Ontario public service—

**Mr. Victor Fedeli:** Let's go to document 2.

**Mr. Kevin Spafford:** —because starting in 2007, I did hold the position of legislative assistant—

**Mr. Victor Fedeli:** Let's just jump to document 2. I'm not going to let you waste any more of my time.

**Mr. Kevin Spafford:** The freedom-of-information protocols are provided by the Ontario public service—

**Mr. Victor Fedeli:** You were very, very pleased—Mr. Delaney, a few minutes ago, said, “‘Filibuster’ was the word used by the opposition.” I want you to look at document 2, page 1. This is an email from David Phillips to you, Chris Morley, Craig MacLennan: “We”—referring to Liberal operatives—“filibustered (in a very credible way I must say)....”

Your plan never was to turn any documents over to us, was it? You had no desire to turn any—and this is as back as March 2007. David Phillips is bragging to you, “We filibustered” in a very credible way.

**Mr. Kevin Spafford:** Thanks. I'm happy to talk about the public accounts committee with respect to the power plant's request for the Auditor General—

**Mr. Victor Fedeli:** So who made the decision—

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Fedeli, respectfully, he's answering your question.

**Mr. Victor Fedeli:** He's wasting time here. He's just ragging the puck.

**The Vice-Chair (Mrs. Laura Albanese):** Let's speak one at a time.

**Mr. Victor Fedeli:** But he's wasting my time by ragging the puck, and I won't put up with that from another witness.

**The Vice-Chair (Mrs. Laura Albanese):** Whenever we ask a question, let's be civil to each other.

**Mr. Kevin Spafford:** Thank you, Chair. I'd appreciate the opportunity to answer that question.

**Mr. Victor Fedeli:** Were you proud of the delay—

**Mr. Kevin Spafford:** I'd really like to answer your original question, Mr. Fedeli, because you've provided a document here, and I believe I have the right to respond to it.

The public accounts committee can direct the Auditor General to do a review. The email you're talking about was a situation in which the Auditor General had raised concerns about beginning an audit into a process where there was ongoing litigation. So at the public accounts committee, I believe your colleagues—I'm not sure, Mr. Fedeli, if you sat on the committee at the time, but actually all three parties agreed to delay consideration of this motion because the Auditor General was on vacation in Australia, and they wanted to wait until he returned.

**Mr. Victor Fedeli:** I was there for some of the public accounts meetings when the filibuster did take place, and I can tell you I was not impressed. Every time we pushed to have the Auditor General give us the ruling or the report on both Mississauga and Oakville, your Liberal MPPs called for a 20-minute recess, literally ran the clock out for the session. I was there. I sat there frustrated. So please don't try to fool us today.

I want you to go to document 3. Go to page 13 of 33. I'm not going to ask you to read it. I'll read it for you. These are your options to get to your strategic goals, as Ms. Fife so aptly brought up, to manage the timing and



manner of the release, so as to limit the negative communications impact on the government:

“1. Continue moving and debating government amendments to the motion”—

**Mr. Kevin Spafford:** Sorry. Which page are you on, Mr. Fedeli?

**Mr. Victor Fedeli:** I'm reading page 13 of 33: “Continue moving and debating government amendments to the motion for the remaining four summer committee days.

“Details:

“—government members continue to debate amendments and move additional amendments for the remaining 32 hours of summer committee time.

“Advantages:

“—would ensure both that no documents are released and that Minister Bentley does not face five hours of public testimony in immediate aftermath of Mississauga announcement.”

Why would you even imagine that you had any options other than just turning documents over to us? What would give you that thought in your head that you could rag the puck for an entire session and not turn documents over?

**Mr. Kevin Spafford:** I'm happy to provide the committee with outlining the issues that were at play as the government decided on its approach. The Minister of Energy felt that the committee did have a right to request the information and receive it, and I think that's fairly outlined throughout the documents you have, that the government has always acknowledged the right of the committee to receive the documents. But there are also other considerations at play, and parliamentary convention dictated that parliamentarians would come together to reconcile those competing interests, and that was the whole basis of the approach that the Minister of Energy took and that staff took to follow.

**Mr. Victor Fedeli:** The unfortunate truth is that the Speaker ruled that we were entitled to all the documents, and I understand the side deals that you and your operatives continued to try to make, but sadly they all came with a price to pay, such as “Drop this and we'll give you that.” You always had a side deal. I was in the committee for part of it, and none of that was appreciated. The fact is, the Speaker ruled we were entitled to those documents.

So I'll ask you again: Why would you think anything other than turning the documents over was what this committee deserved?

**Mr. Kevin Spafford:** I am glad that you brought up the Speaker's ruling, Mr. Fedeli, because I think it's important for this committee to consider as it moves forward—

**Mr. Victor Fedeli:** A waste of time.

**Mr. Kevin Spafford:** —because the Speaker did initiate a novel process, and the novel process was based on the Afghan detainee ruling and other rulings that had come in the past. This process was to bring together the House leaders for a week to negotiate and reconcile the

competing interests and the protections involved in these documents. That was really an approach that confirmed the government's approach. It's unfortunate that the opposition decided that, even after receiving the documents, they wanted to push ahead with—

**Mr. Victor Fedeli:** You can say all you want here. Your own emails tell us what you were doing. You were trying to get through all of those weeks without ever having to turn over one document. It's in your own emails.

I want to jump—staying on document 3, go to the fourth-last page, page 30 of 33. Now we're at a phase where the Mississauga deal has been done. Are you on that letter to Mr. Prue—“Dear Mr. Prue”?

**Mr. Kevin Spafford:** Yes.

**Mr. Victor Fedeli:** This is Ryan Dunn, writing to you and others—Andrew Mitchell, David Phillips. “Urgent—final draft

“Here is the letter that the minister is comfortable with.”

In the third paragraph, it says, “The total cost of relocation is approximately \$180 million.”

It goes down, and on the third sentence, it says, “The total relocation cost also includes ... payments ... to the original site ... construction costs, design costs and permitting costs.”

We know from the Auditor General that that real number is \$275 million, and we know that the auditor told us that you knew—not you specifically; the government knew—that OPA had spent much more than that. The OPA estimated about \$265 million, \$270 million by the time this letter was written.

If you knew that the real number was over \$270 million, why would you have gone along with a letter that tells the public the total cost of relocation is \$180 million?

**Mr. Kevin Spafford:** My role was to advise on parliamentary procedure and the operations of the Legislature. That's the advice I provided to the minister's office—

**Mr. Victor Fedeli:** It was parliamentary procedure. Is contempt of Parliament what you advised him, then? Was it your advice to tell the parliamentarians it was \$180 million when they knew it was \$270 million? It turns out it was \$275 million. Was that your advice? Is that what I'm hearing you say?

**Mr. Kevin Spafford:** The advice provided to the Minister of Energy was that there was a paramount right of the committee to request information. There was also precedent that there's an obligation on the part of the House and committees to also take into consideration other competing interests. That was the advice we provided to the minister.

**Mr. Victor Fedeli:** Keeping the truth from the public—the fact that you've already spent over \$270 million, but publishing, “The total cost of relocation is approximately \$180 million”—you were off by \$100 million—that's okay? Is that what you're saying—

**Mr. Kevin Spafford:** Mr. Fedeli—

**Mr. Victor Fedeli:** —parliamentary procedure?

**Mr. Kevin Spafford:** I think you're giving me a little bit too much credit. When I was in the House leader's office, interacting with over 20 ministries, and was expected to know the details of financial figures—I'm not equipped to answer questions about changing costs. I think the Auditor General has weighed in. I respect the advice of the Auditor General, and I think that should be followed.

**Mr. Victor Fedeli:** So who would have put that number of \$180 million when the government clearly knew at that time that the number was over \$270 million? Who would have done that, then, if not you?

**Mr. Kevin Spafford:** Well, if you're referring to the letter we're talking about here, it looks to be from Ryan Dunn, and—

**Mr. Victor Fedeli:** So you're saying Ryan Dunn wrote that? Do you know if he wrote that?

**Mr. Kevin Spafford:** I don't know if he actually wrote this. He sent it, it looks like, on July 11. It says the minister is comfortable with this letter. It's from the minister, Chris Bentley.

**Mr. Victor Fedeli:** I want you to go to document 5. We'll come back to four, perhaps, later. This is from you to David Phillips, copied to a Samantha Grant.

This is: "Draft so far"—it looks like you authored it—"just have to do the section on 'the deal' in the a.m."

This is a very lengthy document. Did you craft this? Did you write this?

**Mr. Kevin Spafford:** Sorry. Can I just have a moment to take a look at this, please?

**Mr. Victor Fedeli:** Yes. It's 14—actually, that particular section is about 10 pages long—eight pages long, I'm sorry; it's an eight-page document—"Important committee details."

1400

**Mr. Kevin Spafford:** It looks as though I wrote and sent it, and it would have been compiled from various sources that we had on file.

**Mr. Victor Fedeli:** This is pretty detailed. Whoever wrote this really knew their stuff, I must say. So you're saying you wrote this?

**Mr. Kevin Spafford:** As I mentioned, it was compiled from different sources, some of which came from the Ministry of Energy.

**Mr. Victor Fedeli:** But you authored this. On page 8 of 19, the last page of this one—it's marked number 7 down at the bottom—the second-last paragraph: "The matter has been resolved—plain and simple. All the documents requested by the committee have been produced." Did you write that line?

**Mr. Kevin Spafford:** I can't recall if I wrote that specific line, but—

**Mr. Victor Fedeli:** You wrote this document. You're responsible for this.

**Mr. Kevin Spafford:** I authored the document.

**Mr. Victor Fedeli:** You authored the document. Why would you say that all documents requested by the committee had been produced when we know that under sworn testimony from two of the Ontario Power Author-

ity witnesses, including their vice-president—they said the OPA was told by the Ministry of Energy to hold back certain documents—again, they were being cute—because it didn't say exactly the right word; it said "SWGTA" for "southwest GTA." So they were told to hold back documents. It turns out they held back documents in the thousands, and two weeks later, somebody with a better conscience turned 20,000 documents over to us.

When the government knew that we did not have all the documents, why would you have written, "All the documents requested by the committee have been produced"?

**Mr. Kevin Spafford:** I think it is important to speak to the timelines here. I believe, if this is from September 24, that would have been the day that the documents were released—

**Mr. Victor Fedeli:** We got the 36,000, yes.

**Mr. Kevin Spafford:** —and this was a document produced by the government House leader's office, and the assurances from the ministry and the OPA were that all documents had been produced.

**Mr. Victor Fedeli:** So somebody knew they weren't produced, because somebody in the ministry told people at Ontario Power Authority to actually physically pull documents out. We have sworn testimony here from the vice-president of the Ontario Power Authority that that is what occurred. People within your Liberal government did indeed know we did not have all the documents; we were missing 20,000. They were coughed up two weeks later, when somebody perhaps had the sound of jail doors slamming behind them in their mind.

Why would you have written this at the time when your government did indeed know?

**Mr. Kevin Spafford:** I reject the premise of your question, Mr. Fedeli.

**Mr. Victor Fedeli:** Those are facts. It's not a premise; these are facts. We have sworn testimony to that fact.

**Mr. Kevin Spafford:** They're certainly your facts.

**Mr. Victor Fedeli:** No, no; sworn testimony.

**Mr. Kevin Spafford:** I know that the Ontario Power Authority also testified and the Minister of Energy at the time also testified, and it's my understanding that at that time—this was written almost a year ago—all the documents had been produced, and that was the understanding at the time.

**Mr. Victor Fedeli:** Go to page 13 of 19. Now we're at another document. Now we're at Oakville. It's the second page, actually, page 14, the second-last paragraph: "Over the coming days and weeks you will read and hear lots of numbers related to the cost of plant relocation. The only accurate cost to taxpayers for this relocation is \$40 million."

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Mr. Victor Fedeli:** Now, we already know from OPA that this will be up to \$310 million, if you look at today's estimates. One of the witnesses just before you told us that they knew there were going to be additional costs.



Why would you or whomever write a letter that's going to come out from the Liberal government that says that the total cost is \$40 million when it's in the hundreds of millions? Can you tell me that?

**Mr. Kevin Spafford:** Looking at this email, Mr. Fedeli, I see that it's sent to the whole Liberal government, and it's authored by the Ministry of Energy. I had no particular involvement in the statement from the Minister of Energy. I was not involved—

**Mr. Victor Fedeli:** So you're just the delivery person of this particular one. You may have authored the "\$180 million" memo, misleading on Mississauga, but you didn't author this misleading memo on Oakville.

**Mr. Kevin Spafford:** This email: It looks like I forwarded it along to my boss, David Phillips, as a—

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. We shall pass it now to Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Chair. Mr. Spafford, just going back to my earlier question on the freedom-of-information request, I believe you have a during the calendar years 2010, 2011 and 2012.

We checked the freedom-of-information act, and it's fairly clear in a section under "Request":

"24(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1)."

You were not complying with the spirit of the law when you were asked for Project Vapour material, when you said you had no responsive records. In fact, you could look at it.

**Mr. Kevin Spafford:** Mr. Tabuns, I believe if you're referring to section 24—is that what you're referring to?

**Mr. Peter Tabuns:** Yes.

**Mr. Kevin Spafford:** Section 24, subsection 2, "Sufficiency of detail"—just so we understand each other, that's what you're referring to?

**Mr. Peter Tabuns:** Yes.

**Mr. Kevin Spafford:** It says, "If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1)."

My understanding of the act is that the institution in this case was Cabinet Office, because they are the institution designated as receiving requests for the Premier's office and the government House leader's office. There's an obligation on people who run the FOI office, the Cabinet Office, to interact with requesters.

I myself, as a political staff member, never had contact with people requesting FOIs, because there's a protection against political involvement in the FOI process. In terms of going along with the spirit of the act, you're talking about the institution informing the applicant. I would have no role informing the applicant, because the act is set up in a way that screens political involvement in requests.

**Mr. Peter Tabuns:** I understand that entirely, but you wrote back to the person who was coordinating the infor-

mation. Instead of saying, "I have records that are pretty close, that I, as an experienced employee, would be able to say, 'Yes, this relates to what they're asking about'"—you didn't write back and say, "I have documents that refer to Vapour." You just said, "I have no responsive documents." You took not the spirit of the law but the letter of the law, to shield yourself and to shield this information.

**Mr. Kevin Spafford:** Well, Mr. Tabuns, I'm happy to respond to that.

**Mr. Peter Tabuns:** Yes, please.

**Mr. Kevin Spafford:** As I've previously said, I don't believe it is the role of political staff to interpret requests from FOI requesters. That is a task that's delegated to the Ontario public service, and there's legal counsel involved in deciding what searches are done.

You have access to hundreds of my emails and documents from my time in government, and those were a result of the searches that either FOI or the committee did.

There are hundreds of FOI requests every year, and I don't believe it's the role of political staff to insinuate what a requester is looking for by changing search parameters. In fact, I don't think that that act in itself would fit within the law, of changing what a searcher is looking for.

**Mr. Peter Tabuns:** Well, I would say that the way this law is written, you're using literalism to block any helpful effort. You could have told the person, "I have documents that are very close but don't have the exact same term. Are those the ones that you're interested in?"

Anyway, I won't pursue that further, but I think in that instance, you should have been providing that documentation or, if you didn't provide the documentation, at least informing the FOI coordinator that you had material that probably was of interest.

Going back to Dwight Duncan at estimates, we've already talked about the number that Dwight Duncan gave when he was in estimates. You have our communication 3. You note, "campaign vs. govt commitment, 180 vs 190"—

**Mr. Kevin Spafford:** Sorry; do you have the page number, Mr. Tabuns?

**Mr. Peter Tabuns:** Document 3.

**Mr. Kevin Spafford:** Okay. Got it.

**Mr. Peter Tabuns:** Do you know how much the Auditor General has said it would cost to cancel the Mississauga gas plant?

**Mr. Kevin Spafford:** I understand, actually because Mr. Fedeli just referenced it—I wouldn't have the number offhand, but my note is that the auditor put it at \$275 million.

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**Mr. Peter Tabuns:** When you were monitoring Dwight Duncan, were you aware that he was wrong?

**Mr. Kevin Spafford:** I was not aware of the auditor's report at that time because it wasn't released.

**Mr. Peter Tabuns:** Were you aware that the numbers he was giving were not full and adequate?

**Mr. Kevin Spafford:** No. As a staffer in the House leader's office, I deferred to others in the Ministries of Finance and Energy as to what the costs of cancelling the plants would be. It was not my subject area.

**Mr. Peter Tabuns:** When you were monitoring, Dave Phillips says, "More detail to come + regular updates" through the day. Did you continue to send updates?

**Mr. Kevin Spafford:** I can't remember. It was over a year ago. There's potential I did. There's potential I reported in orally to a staff meeting. I can't remember this particular one. You may have my records from the rest of the day. I'm not sure.

**Mr. Peter Tabuns:** In document 4, the filibuster to block the motion on the Auditor General—sorry. There was a motion put forward by France Gélinas in the public accounts committee for an audit of the power plants' cost in March 2012. That was filibustered, blocked. Were you involved in the development of that filibuster plan?

**Mr. Kevin Spafford:** I think I've referred to the day in question before, but I'm happy to reiterate. The strategy on behalf of the government was that the auditor had expressed concerns about beginning an audit while there were certain negotiations under way. That debate was taken up by the members of the committee who decided to raise those issues. In fact, if I remember correctly, your colleague Madame Gélinas agreed with the debate that the members had put forward. That's how I would characterize how that day went.

**Mr. Peter Tabuns:** I would actually say Mr. Phillips characterized it more accurately as, "We filibustered," rather than just having a debate on the merits of the matter. You were trying to drive the time. That, in my discussions with Ms. Gélinas, is her experience as well, that the time got eaten up.

**Mr. Kevin Spafford:** Mr. Tabuns, I did actually have a chance to see this email before today. You've actually cut out my original email to this, which I think is important to the context of this. If I remember correctly from when I saw this before committee, my email talked about the original motion, that we wanted to ensure the Auditor General had a chance to express his concerns, and that the Liberal members of the committee and staff had agreed that we would try to give the auditor the opportunity to come and express his concerns. So I—

**Mr. Peter Tabuns:** So you filibustered.

**Mr. Kevin Spafford:** What's that? Sorry?

**Mr. Peter Tabuns:** So you talked it out. That's what you did.

**Mr. Kevin Spafford:** I think I would point to the part of the email where it says your colleague Madame Gélinas actually agreed with what eventually happened. I would say that that is democracy in action when parliamentarians come together and agree on a course of action.

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Mr. Peter Tabuns:** Well, I think when you get things talked out, sometimes you agree to a deferral so it isn't

lost forever. That is not necessarily democracy in action; that's simply time management.

Whose idea was it to filibuster and block the motion on having the Auditor General look at the power plants issue?

**Mr. Kevin Spafford:** I'm pleased to give you a bit of an overview and hopefully help the committee understand how the operations of committees worked under our government. Members of the government—that's MPPs and staff—work together to develop a strategy. That would be the Liberal caucus members—

**Mr. Peter Tabuns:** I think you're straying from where I'm going. Whose idea was it to filibuster?

**Mr. Kevin Spafford:** I'm giving you an overview of how it works.

**Mr. Peter Tabuns:** I understand the overview, but generally speaking, you look around this room and you'll see that different people advise others; we talk amongst ourselves; some are leading a particular initiative, and others collaborating—

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, Mr. Tabuns. Unfortunately, the time has expired. I will turn it over to Mr. Delaney.

**Mr. Bob Delaney:** Kevin, when it came to filibustering, it would seem that the real champions were the official opposition, who, according to some of the information compiled in the government House leader's office and referred to in the Legislature—since the 2011 election, it had taken an average of 52 sessional days to pass a government bill; 35 sessional days longer than the average bill during the Bill Davis second minority government.

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Delaney, I have to remind you that we need to remain relevant to the mandate.

**Mr. Bob Delaney:** Okay. So if we are pursuing a discussion about this issue, pertaining to dragging it out, wasn't it the PCs who were more active in bell-ringing and stalling the Legislature than the government?

**Mr. Kevin Spafford:** I really wish I had the documents at hand today to talk about them, but from what I recall, the time period in which the minority government was—

**The Vice-Chair (Mrs. Laura Albanese):** I apologize, but the question, and therefore the answer, doesn't have relevance to the mandate.

**Mr. Bob Delaney:** Okay. So let's move on, then, to the estimates committee.

I'd like to quote from Michael Prue, the Chair of the estimates committee at the time that the original motion passed. One of the comments that he made was the following: "I think the minister, being a lawyer himself, knows full well that he may choose to answer the question in such a way as not to prejudice the province in any way, and I would expect him to do so."

In terms of document production, Mr. Prue stated, referring to the committee, "They have the right to ask for the documentation. The minister has the right to decline



either giving that documentation or giving voice to that documentation during his answering of the questions.”

Did that at the time give you a sense that the Chair of the estimates committee was validating the concerns that Mr. Bentley had raised?

**Mr. Kevin Spafford:** Certainly. And in fact, more than that at the time—I think I described before—in the context of a minority government in Ontario, not having dealt with a true minority in decades, everyone working on the issues of the day was facing new issues that were coming up.

Michael Prue’s ruling, as Chair of the estimates committee, really was a new ruling that confirmed that the minister had the opportunity to provide a response that he thought was in keeping with the committee’s right to request information, but also the protections of solicitor-client privilege and commercial sensitivity, which, in fact, was his response. So that really confirmed the approach that the minister had, based on the ruling from the Chair. Going forward from that, we understood that that ruling would have a paramount effect in terms of how the committee would operate.

Following that, I understand that the Chair made a different ruling with respect to Mr. Leone’s forthcoming motion. So that was obviously a change in the ruling that we had originally had, but it certainly formed the basis of how we are proceeding—as it should, because the Chair makes a ruling and there’s no debate; you follow the ruling of the Chair. That’s what I believe the minister was doing.

**Mr. Bob Delaney:** So we’ve discussed the various attempts at reaching a negotiated solution with the opposition parties regarding the contempt motion against then-Minister Chris Bentley, and one of the transition memos we’ve seen quotes Mr. Phillips as saying, “The government made several offers to the opposition to resolve the matter, but all were rejected. The opposition refused to engage in any meaningful negotiations.”

Could you talk to the committee about what offers were made to work with the opposition on this matter?

**Mr. Kevin Spafford:** Sure. There were a few occasions that overtures were made to find a solution and negotiate a solution to the matter. The first was during the estimates committee process, when the House leaders and staff of the House leaders met to discuss the issues. The government did offer to the opposition, and acknowledged the right of the committee, to see those records, but expressed the concerns of the Minister of Energy and tried to enter into a process where the committee could get access to the information in a way that is consistent with past parliamentary precedents.

I’ve used the example of in camera—and other committees have used that approach—and so the House leaders discussed that and staff discussed that, and we proposed that the estimates committee enter into some sort of process where certain documents could be reviewed in camera. Those were overtures made prior to the conclusion of the estimates process; unfortunately, those were not accepted.

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I think it’s safe to say that there was a drive on the part of the members of the opposition at the time to proceed with the motion and reject the overtures that were being made. The second example of that is that when the Speaker made his ruling—in September, I believe—he provided the House leaders with a week to get together and discuss, and there were high-level negotiations between the House leaders.

In those negotiations, I know that the government House leader made a formal proposal with various options of providing the documents with protections provided, and offered that process. The opposition rejected it outright and decided to instead just move ahead with contempt, and the government ended up tabling all the documents, recognizing the paramountcy of the Legislature.

**Mr. Bob Delaney:** Any ideas why the opposition refused to negotiate with you?

**Mr. Kevin Spafford:** You know, I’m not sure. As I mentioned before, there were three examples I could find, and maybe more, of Conservative members of the committee who actually would have at the time agreed to a novel process of finding a way to review these documents. Why our negotiations didn’t make their way to the committee members, I’m not sure. I think it’s an issue worth the committee’s time to look at.

Mr. Leone has made statements: “Why didn’t you offer us in camera? Why didn’t you offer us other ways of looking at the documents?” Well, that’s not, in fact, true. There were those offers made. They were made at the House leader level and at the staff level. Perhaps they didn’t get down to the caucus members of the committee at the time.

There are often many channels of how this House functions: on the floor of the committee, on the floor of the House, and then there are House leaders, and many decisions in this place are made at the House leaders’ table. It’s no less legitimate because it occurs on the second floor. Those discussions were real, they happened and they’re reflected in the documents that were provided. Unfortunately, the opposition decided not to take us up on any of those offers.

**Mr. Bob Delaney:** In a September 18, 2012, letter to former Premier McGuinty, the opposition House leader wrote, “It is our position that the documents should be tabled in the Legislature, unedited and unredacted.” As a reminder, the Oakville deal was not yet finalized at the time this letter was sent, and you’ve pointed out that, from the indications you’ve had, the opposition wasn’t really interested in a compromise. Any comments on that?

**Mr. Kevin Spafford:** I would just say again that, from my experience, we had those conversations with the House leaders and the opposition staff, and there was no willingness to discuss a conversation.

At times, there was a willingness from some of the staff who have now departed. I know one, Jeffrey Kroeker, who was a PC staff member, was really inter-



ested in the idea of in camera. He'd worked federally through the Afghan detainee issue and he was interested in it. It went up to PC leadership, and we understand it was rejected.

**Mr. Bob Delaney:** Okay. So instead of pursuing something that, perhaps, some of their own staff members may have recommended—

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Mr. Bob Delaney:** —in fact, the Legislature was shut down for an extended period of time. Do you have any final comments on this?

**Mr. Kevin Spafford:** As I said, I would submit that I think the committee has a real role here for plowing a way forward to deal with these issues in the future. There is precedent, and in this House, at this time, ongoing committees are finding ways to protect sensitive information, such as the public accounts hearings going on with Ornge. They've made those protections available, and I think it's important to provide those guidelines. In the past, parliamentarians have come together with reason, to discuss and debate and work out a path forward for satisfying the committee.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you. We now turn it over to Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. I just want to recap some of what we've learned today from these emails that we've discussed. Back in March we started off—to use the words right out of your own documents—to filibuster public accounts so that we can drag this into the summer, get through the spring and into the summer.

In July, then, we saw—a quote again from here—“to move and debate more additional amendments to fill in the remaining 32 hours.” That gets you first out of public accounts and now through estimates.

On August 3, you hoped to win the Kitchener by-election, and that kind of halts any more hearings.

Number four, in September, with respect to the committee, the decision is not to turn over any documents, and when we do get the 36,000 documents, they were redacted, deleted, some were removed and others, we learned, were destroyed, but basically the whole idea was to delay us getting our hands on documents.

Finally, when the 20,000 more documents were turned over, that brought us to the 56,000 documents from the original request. So we've seen a filibuster at public accounts, debate for 32 hours at estimates, not turning over documents at committee and finally turning over the documents at committee. When we realized that these documents proved that they really were redacted, deleted, removed and destroyed in the original 36,000, the Premier's inclination—the very next opportunity, on the Monday—was to resign and prorogue Parliament.

That's kind of what we've learned so far in the last hour, a little bit from this morning and certainly from David Phillips last week.

You're involved in a lot of this, in the cover-up aspect. The filibuster, wasting 32 hours at estimates, not turning the documents over—actually, the part that I didn't bring

up was the document that you were involved in crafting, misleading us by saying it's \$180 million, and the other one that misleads us by saying it's \$40 million.

Again, I'm going to ask you: Why? Why all that? What is it that you don't want us to know, that you went to all these pains for almost a year now or more than a year now?

**Mr. Kevin Spafford:** Thanks. I appreciate the timeline you provided, Mr. Fedeli. In July, in fact, the committee did pass the Ministry of Energy's estimates. The motion went forward and the minister did provide documents upon the conclusion of the Mississauga case. The whole approach to the government's strategy was that the committee had to write to request information. I think, if you've looked through my documents, and you say you have, the acknowledgement is there and has always been there that the committee has the right to request the documents.

What followed were the other factors and considerations that past Legislatures and this Legislature, in fact, have taken into consideration in how to receive those documents. As Minister Bentley said, it wasn't if, but when, and, I would add, how. I think that was an important consideration that the minister was trying to inflect into how the committee would receive documents that could put the Ontario taxpayers at risk.

**Mr. Victor Fedeli:** Well, I appreciate your thoughts, but quite frankly that wasn't the whole approach. The whole approach to the government strategy was—many of these are in your own words—to delay and to push this off. We have other documents that talk about, “We'll try to get it through, past the next budget. If we survive we'll deal with it then.” Every time, all we've seen from you and all of your Liberal operatives was to delay, not to give us everything, be cute with freedom of information, where, “Oh, it wasn't spelled correctly” or, “It wasn't quite thorough.” That's all we've seen from you and your fellow operatives.

**Mr. Kevin Spafford:** I disagree with—

**Mr. Victor Fedeli:** What do you think you know that we don't know?

**Mr. Kevin Spafford:** I disagree with your assessment, Mr. Fedeli.

**Mr. Victor Fedeli:** I'm just reading from your own emails and—

**Mr. Kevin Spafford:** I think some of the memos that you look at that I drafted, which are in the documents, the government took a methodical approach to developing a position on this that was based on the parliamentary procedures. If you look back and look through the parliamentary texts which your House leader's office probably has in their office—we looked through those and found that, yes, the committee had the right to request information. That wasn't a question. The question was, what precedent is there for respecting important precedents like legal client privilege?

**Mr. Victor Fedeli:** No, we understand you took a methodical approach, but the methodical approach was to



delay at every turn. There's nothing here in any of the email provided by you or Mr. Phillips or anybody else that showed, "You know what? I think we should do this and be forthcoming to the committee." It was all about, "What little can we give them to delay us to the next day, the next week, the next 32 hours, the spring, the summer"—right up to and including the ultimate: the resignation of the Premier, the finance minister and the Minister of Energy, and prorogation. What makes you think that you have the right to stretch out something like that over the course of a year rather than be forthcoming with the information?

**Mr. Kevin Spafford:** I just don't see it that way, Mr. Fedeli, and I think if you look at the documents—

**Mr. Victor Fedeli:** Well, the documents do. The documents are pretty revealing.

**Mr. Kevin Spafford:** Yes, exactly, and I think if you do look through the documents, you'll see that at every stage, the government took an approach that was informed by experts, that was based on parliamentary procedure. The documents started to flow in July to the committee when Mississauga was settled and continued to flow. That was based on the expert opinion that was provided to the government and that the ministry adviser decided to take a position on.

**Mr. Victor Fedeli:** They only flowed when we pushed, when the Speaker said that you had to, when we proved that in the 36,000, there were redacted documents and missing documents. The only flow we ever got was after we forced it, and we got to the next stage and got another eyedropper of information. I've said this here before, we either have always been led around by the nose or allowed to spin our wheels, this little eyedropper of information—and we're getting there, mind you. We're starting to paint a picture. The recap that I did paints a pretty good picture of the cover-up and the delays we've seen.

Let me look at another chapter. Let me ask you again: Do you delete your emails?

**Mr. Kevin Spafford:** I kept records management—certainly I kept emails from different time periods when I was in government, based on the schedules that I was provided.

**Mr. Victor Fedeli:** Did you delete your email?

**Mr. Kevin Spafford:** You have hundreds of my emails here—

**Mr. Victor Fedeli:** Yes, I understand that, but did you delete email?

**Mr. Kevin Spafford:** —and my records management practices were in line with the schedules that are set out.

**Mr. Victor Fedeli:** Did you delete any email?

**Mr. Kevin Spafford:** In my time in government, there were transitory emails, if you understand the nature of my role. For example, in the morning, I would email opposition staff with the schedule of debate; and the schedule says that that email should be discarded, and I followed the schedule in those cases.

**Mr. Victor Fedeli:** Other than transitory email, did you delete any email?

**Mr. Kevin Spafford:** Other than transitory emails?

**Mr. Victor Fedeli:** Yes.

**Mr. Kevin Spafford:** I'd look to the schedule of records, in which there are other schedules of records that—

**Mr. Victor Fedeli:** It's kind of a simple question. It's just a simple question.

**Mr. Kevin Spafford:** Well, it's a simple question, but I think there's an answer for that, actually—

**Mr. Victor Fedeli:** I worry about my question, actually, asking you if you deleted transitory—

**Mr. Kevin Spafford:** There are a few different sections. There's advertising and promotional material, surplus duplicates—

**Mr. Victor Fedeli:** I want to get quickly to kevin@spafford.ca—

**Mr. Kevin Spafford:** —the duplicates of the email are another area—

**Mr. Victor Fedeli:** Excuse me Chair, I'm going to ask another question here. Kevin@spafford.ca: Is that your personal email?

**Mr. Kevin Spafford:** Yes, it is.

**Mr. Victor Fedeli:** Did you ever use that for government business?

**Mr. Kevin Spafford:** Sometimes at home, late at night, I didn't have a government laptop. I would send along a document—

**Mr. Victor Fedeli:** Do you think any of those emails should be turned over to freedom-of-information or to this committee, if they met the criteria?

**Mr. Kevin Spafford:** If it met the criteria of—which criteria?

**Mr. Victor Fedeli:** Many of the last dozen requests we've put in for email.

**Mr. Kevin Spafford:** I'd be happy to provide any information that the committee would request.

**Mr. Victor Fedeli:** Okay. We'll be bringing a motion for all the email from kevin@spafford.ca.

I notice a lot of other people are using other emails: johnmilloy@rogers.com; dlphillips01@gmail.com—

**The Vice-Chair (Mrs. Laura Albanese):** One minute.

**Mr. Victor Fedeli:** —johnmilloympp@rogers.blackberry.net; a lot of Kevin Spaffords, D.L. Phillips, melaniefrancis28@gmail.com; these aren't government accounts. What's that all about? Why are people using non-government email to have minister's letters and written submissions? What would that be for? Some of these are during work hours.

**Mr. Kevin Spafford:** Certainly I'm happy to discuss the use of personal email. In my case, I didn't have a government computer—

**Mr. Victor Fedeli:** It's 10:27 a.m.

**Mr. Kevin Spafford:** It's 10:27? And which—

**Mr. Victor Fedeli:** Somebody's emailing at 10:27 a.m. You got emails at 5:17 p.m.

**Mr. Kevin Spafford:** Sorry, which email are you referring to, Mr. Fedeli?

**Mr. Victor Fedeli:** I'm just asking: All of these emails—they're not all late at night. What advantage

would there be to using a personal email rather than a government email? Is it to usurp freedom of information? Is it to usurp this committee? Why do you think some of these people are using—

**Mr. Kevin Spafford:** Certainly not, and actually, in the documents you're referring to, I came back to volunteer for two days to help with the point of privilege.

**Mr. Victor Fedeli:** Well, that's appreciated, but why are they usurping this committee—

**The Vice-Chair (Mrs. Laura Albanese):** I will end it there. I'm sorry; the time is up. Thank you, Mr. Spafford, for appearing before the committee.

We will now take a recess of about 10 minutes. Is that fine? Thank you.

*The committee recessed from 1435 to 1447.*

### SUBCOMMITTEE REPORT

**The Vice-Chair (Mrs. Laura Albanese):** We're back in session, and our first order of business is the report of the subcommittee, which I will ask MPP Clark to read into the record.

**Mr. Steve Clark:** Thank you, Chair. Your subcommittee on committee business met on Tuesday, August 20, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013.

(1) That the Clerk of the Committee arranges for the return of the documents received from the Office of the Budget and Treasury Board of the Ministry of Finance in response to the May 7, 2013, motion passed in committee, and requests the confidential documents be separated from the non-confidential documents.

(2) That the Clerk of the Committee requests that the Office of the Budget and Treasury Board return the separated documents (confidential and non-confidential) within two weeks of this subcommittee report passing, for distribution to the committee.

I move that the subcommittee report be adopted.

**The Vice-Chair (Mrs. Laura Albanese):** Thank you, MPP Clark.

Any discussion? Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair.

**Mr. Bob Delaney:** Do we have that on paper?

**Mr. Victor Fedeli:** This is the 27 boxes, Chair, that we received on May 21? That's the one we're referring to right now?

**The Vice-Chair (Mrs. Laura Albanese):** We will confer.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Yes, they are.

**The Vice-Chair (Mrs. Laura Albanese):** Yes, they are.

**Mr. Victor Fedeli:** So when it says here, "arranges for the return of the documents," do you expect us to return our documents to you?

**The Clerk of the Committee (Ms. Tamara Pomanski):** No. I'll return the boxes they gave to me.

**Mr. Victor Fedeli:** Okay, so it's the boxes. The CDs that we have at the moment, we'll keep?

**The Clerk of the Committee (Ms. Tamara Pomanski):** Correct.

**Mr. Victor Fedeli:** Okay, and once we receive the new ones and compare that absolutely every file is there, only separated, we can return the original to you?

**The Clerk of the Committee (Ms. Tamara Pomanski):** Correct.

**Mr. Victor Fedeli:** Okay, that's fair. Thank you.

**The Vice-Chair (Mrs. Laura Albanese):** Any further comment?

**Mr. Bob Delaney:** Just before I do—thank you. We're good.

**The Vice-Chair (Mrs. Laura Albanese):** We're good?

**Mr. Victor Fedeli:** Maybe I have one more, Chair.

**The Vice-Chair (Mrs. Laura Albanese):** Sure.

**Mr. Victor Fedeli:** Am I allowed to say the four categories? Yes or no. Was it in the letter? Was it in the public letter, the four categories?

*Interjection.*

**Mr. Victor Fedeli:** Then what I'm just asking is for the assurance: What they're separating by "confidential" are the four either corporations or topics that were to be separated?

**The Clerk of the Committee (Ms. Tamara Pomanski):** I think that would be up to the ministry. Whatever they listed as confidential, they would separate out.

I think they did mention the items in their transmittal letter.

**Mr. Victor Fedeli:** The four names?

**The Clerk of the Committee (Ms. Tamara Pomanski):** Yes.

**Mr. Victor Fedeli:** I'm positive as well. So it's nothing more than those four names that will be—

**The Clerk of the Committee (Ms. Tamara Pomanski):** I'm not sure. I just know I would just request for them—that they would determine the ones that were confidential versus non-confidential.

**Mr. Victor Fedeli:** Hang on a second. I don't want anything new. I wouldn't want to see anything new declared confidential. It's the four topics that they mentioned. I don't have my letter here either; I apologize for not bringing it down with me.

**Mr. Joe Dickson:** Go get it.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Joe Dickson:** Go get it, Vic.

**Mr. Victor Fedeli:** No, down with me from North Bay. I just want to make sure, because if those four names are public, I'd like them recorded on here.

**The Vice-Chair (Mrs. Laura Albanese):** Then perhaps we can add, "in the original letter, received in the original"—

**Mr. Victor Fedeli:** That's fine. As outlined in the original transmittal letter, and that limits it by those four that can be listed as confidential.



**The Vice-Chair (Mrs. Laura Albanese):** As outlined in the original—

**Mr. Victor Fedeli:** Transmittal letter.

**The Vice-Chair (Mrs. Laura Albanese):** — transmittal letter.

**Mr. Victor Fedeli:** Is that fair, Chair and the Clerk?

**The Vice-Chair (Mrs. Laura Albanese):** I believe so. So it's going to read "and requests the confidential documents be separated from the non-confidential documents as outlined in the original transmittal letter."

**Mr. Victor Fedeli:** That's fair.

**The Vice-Chair (Mrs. Laura Albanese):** Any more comments? Shall the amendment carry? Carried.

Shall the report be adopted, as amended? Carried.

We will now deal with a motion from Mr. Fedeli, which he will now read into the record—a new motion.

**Mr. Victor Fedeli:** I move that the Standing Committee on Justice Policy request from the Ministry of Government Services all documents and electronic correspondence related to the cancellation and relocation of the Oakville and Mississauga gas plants, sent or received, by Alicia Johnston from 2010 until her departure from the Premier's office, including all correspondence from the aforementioned individual stored in all electronic primary and secondary storage vaults including the "Enterprise Vault," and any backup tape; that the search terms include any and all proxy names including but not limited to the following: Project Vapour, Project Vapor, Vapour, Vapor, Project Vapour Lock, Project Vapor Lock, Vapour Lock, Vapor Lock, TransCanada, TCE, Greenfield, Greenfield South, Project Fruit Salad, Project Banana, Project Apple, Oakville gas plant, Mississauga gas plant, EIG, EIG Management; that the documents and electronic correspondence be provided by September 10, 2013; and that the documents and electronic correspondence be provided in an electronic, searchable PDF.

**The Vice-Chair (Mrs. Laura Albanese):** The motion is in order. Any debate?

**Mr. Bob Delaney:** Yes, Chair. This motion asks a third party to assist the ministry in compliance. I'm not sure at this point whether the due date suggested by Mr. Fedeli is realistic. We don't have the information to know whether or not that's plenty of time or nowhere near enough time. I would point out that the committee has been advised that a search on the storage vaults, the Enterprise vault—we have been told that this is very expensive and may involve searching for documents that, as far as we know, may or may not even exist.

In light of this, I'm wondering whether Mr. Fedeli would like to narrow his search terms because he's casting such a wide net that this is either going to take one heck of a long time or he's going to ask a supplier to undertake a very expensive project with no estimate whatsoever of the time or expense required and that may or may not yield anything fruitful.

**The Vice-Chair (Mrs. Laura Albanese):** Any comments?

**Mr. Victor Fedeli:** No.

**Mr. Bob Delaney:** Chair, we can't support this motion as written. Due diligence would require us to ask the third party supplier how long this might take and what this might cost. I think that would be the prudent step before—I mean, we have no objection to providing any documents that the government may be able to lay hands on, but if it comes to a third party, we'd like to get an estimate of both time and expense before undertaking the effort.

**Mr. Victor Fedeli:** Chair, this request is virtually identical to every other request that we have made from this committee, with the exception that it's now in that Enterprise Vault, which of course we learned is where the deleted and destroyed emails went to die. With only 288 emails from this particular person, based on all of the other quantities—over 1,000—from everyone else, we have to presume that there are indeed additional emails that we're entitled to.

I am quite certain that MGS people we're requesting will come back to us if there's something extraordinary about this, as they have in the past when they first disclosed the existence of this vault.

**Mr. Bob Delaney:** The government has previously offered everything that responds to the committee's mandate, and I have no problem with the request on its face. What I do ask is that, prior to undertaking what could be a time-consuming and expensive search, we first ask the supplier how long might it take and what might it cost and, in fact, do the kind of due diligence that even some of the members of the opposition have said to the government, "Why haven't you done it?" The government is now saying, "Let's just do that active due diligence."

Everything that's within the government's orbit, you can have it, as you've been able to have everything else. But if what you're asking for is an activity and an outcome that has to be delivered by an independent third party that has already warned us that this is time-consuming and expensive, can we get an estimate of both the time and the cost so that we can properly manage both our deliverables and our process, not to mention our money?

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Fedeli.

**Mr. Victor Fedeli:** Two points: First, Chair, Mr. Delaney is incorrect in his assumption and his statement that the government has previously offered everything this committee has asked for. We're still here looking for emails that were destroyed, deleted, redacted or we wouldn't be here—still looking for that, if indeed they had supplied this committee with everything we asked for. I recapped the process that we had to go through to get to this committee stage, let alone the delays this committee has had with the 20,000 documents that were removed. That's my first point.

My second point is, I would repeat on the record that I'm quite certain that MGS would be able to come back to this committee if there was something extraordinary about the cost or the time and report to us. It would not be unusual for that to occur. I just don't want to start that



way. We may end up there, but I certainly would not want to start that way. Those are my final thoughts on it.

**The Vice-Chair (Mrs. Laura Albanese):** Further comments?

**Mr. Bob Delaney:** Actually, I accept Mr. Fedeli's comments.

**The Vice-Chair (Mrs. Laura Albanese):** All those in favour? Opposed? Carried.

We will now move on to deal with two motions by Mr. Tabuns. They both have been deemed in order by the Clerks. Mr. Tabuns, if you would like to read the first motion.

**Mr. Peter Tabuns:** I move that the Standing Committee on Justice Policy request that the office of the government House leader produce any and all paper and electronic files and records from the period of May 16, 2012, to March 5, 2013, inclusive, related to the May 16, 2012, motion at the Standing Committee on Estimates calling for the production of documents related to the Oakville and Mississauga gas plants;

That all responsive files and records include but not be limited to: correspondence, briefing notes, emails, PIN messages, BBM messages, SMS messages, memoranda issue or House book notes, opinions and submissions, and including any drafts of or attachments to those records; and

That all submissions be tabled as searchable PDF documents—and, Madam Vice-Chair, I should have added a timeline, and I will—to be reported back in 21 calendar days.

**The Vice-Chair (Mrs. Laura Albanese):** In 21 calendar days?

**Mr. Peter Tabuns:** Yes.

**The Vice-Chair (Mrs. Laura Albanese):** Of the motion passing?

**Mr. Peter Tabuns:** Yes.

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Delaney?

**Mr. Bob Delaney:** Chair, if my understanding of this is correct, and I do believe it is, the office of the government House leader is pleased to say that you can have it yesterday, because apparently you do. I think—and correct me if I'm wrong or fill in the parts that I'm missing—all of this information has already been turned over to you. What parts—help me out here. What part are we missing here that you haven't got?

**Mr. Peter Tabuns:** According to our staff, in fact, we don't have all this. If we have it, then I'm quite happy to have the government House leader point it out.

**Mr. Bob Delaney:** We are more than willing to comply. Is it possible that you could cast this net a little bit narrower, and if there is something that you believe that you don't already have, if you ask for it, we're delighted to try to help you hunt it down. But in the motion that's here, I've looked this over and discussed it with the staff of the government House leader, and they say, "We've already done this." So what part are we missing here? Is there anything that you can help us with to make this request a little bit narrower and, in so doing, not have

people give you boxes and boxes of material that may or may not be responsive to the motion? Let's assume that it is, but it's the same stuff that you already have.

**Mr. Peter Tabuns:** Well, my assumption, then, Mr. Delaney, is, if you already have it, that you'll have no difficulty extracting it and providing it in the form that I've requested. But I—based on reports back from our staff—don't have an indication that, in fact, we have this material.

**Mr. Bob Delaney:** The two motions are somewhat similar, and they both come from the office of the government House leader. Can I beg the indulgence of the committee just for a very brief recess? We are trying to say yes to this, and we're also trying to help you not have to sift through many thousands of documents that you may already have. Can I just have five minutes to ask this of staff, and perhaps we could even come back with a helpful suggestion? Or perhaps—

**Mr. Peter Tabuns:** I have no objection to a five-minute recess.

**Mr. Bob Delaney:** It'll be five minutes or less.

**The Vice-Chair (Mrs. Laura Albanese):** Okay, a five-minute recess.

*The committee recessed from 1502 to 1511.*

**The Vice-Chair (Mrs. Laura Albanese):** We are now back in session. Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. I have asked the government House leader's office if they would please print me off a few copies of the three-page letter that was sent to the Chair of this committee on May 21, 2013, from the chief of staff of the Office of the Premier.

Prior to getting that, Mr. Tabuns, what you would have received are all documentations and correspondence, electronic or otherwise, between January 1, 2010, and May 7, 2013, which seems to be a wider range than what you've asked for, related to the cancellation and re-location of the power plants in Mississauga, including but not limited to—and all of the qualifiers and the search terms.

You received 15 boxes of responsive documents to accompany that letter, which represents something like 30,000 pages. The chief of staff has said that the office has interpreted the committee's request very broadly, and—I'll quote from the letter—"although the government House leader's office is not formally part of the Office of the Premier, records from all staff within that office have also been included in the documents provided," which would include, as was said earlier, some 1,829 pages from Dave Phillips.

So while I appreciate the spirit with which the request has been made, would you like to stand it down for a bit to see whether or not we've already done it? Because I think we already have. If we haven't, we'll make up the difference or have a reason to discuss it. It would give me great pleasure to say that we've already met this yesterday.

**The Vice-Chair (Mrs. Laura Albanese):** Mr. Tabuns?



**Mr. Peter Tabuns:** If you will give me a moment.

**Mr. Bob Delaney:** Sure.

**The Vice-Chair (Mrs. Laura Albanese):** Sure. We'll temporarily recess again.

*The committee recessed from 1513 to 1514.*

**The Vice-Chair (Mrs. Laura Albanese):** We're back in session.

**Mr. Peter Tabuns:** I'd like to thank the committee for its indulgence. I'm going to double-check. I would appreciate it if this motion could be tabled and brought back at our next meeting.

**The Vice-Chair (Mrs. Laura Albanese):** Is the committee okay to defer the motion?

**Mr. Bob Delaney:** We're fine.

**The Vice-Chair (Mrs. Laura Albanese):** Okay. Agreed? Agreed.

Well, I believe that that concludes—

*Interjection.*

**The Vice-Chair (Mrs. Laura Albanese):** No, we have motion number 2. Mr. Tabuns.

**Mr. Peter Tabuns:** We'll hold them both.

**The Vice-Chair (Mrs. Laura Albanese):** We'll hold them both.

**Mr. Bob Delaney:** It was a package deal.

**The Vice-Chair (Mrs. Laura Albanese):** Okay. Thank you.

**Mr. Victor Fedeli:** Chair, before you gavel us out, I just wanted to check: We are dealing with the confidential documents today, right?

**The Vice-Chair (Mrs. Laura Albanese):** In the sub-committee meeting.

**Mr. Victor Fedeli:** Okay. Thank you.

**The Vice-Chair (Mrs. Laura Albanese):** This committee is adjourned, and we will proceed to the sub-committee meeting. Thank you very much.

*The committee adjourned at 1515.*

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Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 10 September 2013

# Journal des débats (Hansard)

Mardi 10 septembre 2013

## Standing Committee on Justice Policy

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 10 September 2013

Mardi 10 septembre 2013

*The committee met at 0831 in committee room 2.*

## ELECTION OF VICE-CHAIR

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the justice policy committee to order.

We have our first issue for the day, which is the election of a Vice-Chair. I'd like to, first of all, on behalf of the committee, thank Mrs. Albanese for her work as Vice-Chair. As you know, the Vice-Chair's responsibility is to step in should the Chair be incapacitated or unable or possibly unwilling to fulfill his role.

Mr. Delaney, do you have a motion coming forward?

**Mr. Bob Delaney:** Thank you very much, Chair. I move the election of Mr. McNeely as the new Vice-Chair of the committee.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Are there any discussions on this issue, on the election as Vice-Chair of Mr. McNeely? Mr. McNeely, I take it you accept.

All those in favour? All opposed?

Mr. McNeely, I congratulate you on being elected Vice-Chair of the justice policy committee.

## MEMBERS' PRIVILEGES

## MR. ANDREW FORGIONE

**The Chair (Mr. Shafiq Qaadri):** I'd invite our first witness to please come forward: Mr. Andrew Forgione, issues manager and press secretary, government House leader's office. Welcome, Mr. Forgione. You'll be affirmed, I understand. Please proceed.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Andrew Forgione:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Forgione. You have a five-minute address, beginning now.

**Mr. Andrew Forgione:** Thank you, Chair and committee members. My name is Andrew Forgione, and I am currently the issues manager and press secretary to Minister Milloy in his capacity as government House leader.

I believe I have been called to this committee because of my previous roles working for Minister Bentley and Minister Chiarelli at the Ministry of Energy. I began working at the ministry at the end of May 2012, and I continued there until one month ago. My role for both Minister Bentley and Minister Chiarelli was related to issues management and communications. My job entailed creating communications materials for question period, media events, briefing the minister daily, as well as helping see legislation pass and working on the committee process for the minister.

As you are well aware, the Oakville gas plant was cancelled in 2010 and the Mississauga gas plant was cancelled in 2011. Because I did not start working at the ministry until May 2012, my knowledge is limited to the committee process and communications after my start date.

During the months of June and July, I was a new staffer at the ministry. I spent most of my time shadowing the former issues manager, sitting in introductory briefings and becoming familiar with the various issues in the ministry.

In July 2012, the ministry announced a relocation agreement for the Greenfield South gas plant. My involvement in this was purely communications and issues management. I did not have a seat at the negotiating table. For this announcement, we received our costing materials and backgrounder from the experts at the OPA and in the ministry. These were complex calculations, and we did not have the capacity or the resources available in our office to do them ourselves.

I was, however, involved in the release of documents related to this project. I reviewed a set of documents in early July. To the best of my recollection, these were responsive records from the OPA relating to the Mississauga gas plant. My role was to review these records for issues management purposes and report back to the minister's office as to what could be expected in the release.

I was also involved in the release of records relating to the Oakville facility. In August 2012, 10 boxes of the OPA's documents were delivered to Ms. Jesse Kulendran and myself. I was again involved to review these records for issues management purposes and to report back to the minister's office on what was to be expected in the release.

I was not involved in any discussions with the OPA or the ministry on how to actually interpret the motion. I

was not involved in the actual production of the responsive records, and had no involvement with respect to redactions.

I think it is important to note that Minister Bentley himself had no direct involvement in the document search or subsequent disclosure of the documents. I also want to stress that this was a new process for the ministry and the OPA, and they were not familiar with how to properly conduct document searches of this magnitude.

I'd like to speak briefly about the period in September to October 2012. During this time I prepared Minister Bentley's House book notes for question period. I always did my utmost to provide the minister with accurate information. The details with respect to both agreements came from the ministry and the OPA, and the minister's notes reflected those details. I also did my best to ensure that with respect to the document disclosure, the minister's House book notes reflected accurate information.

It was our understanding that all documents responsive to the committee's motion had been produced. As we know, on October 12, 2012, both the ministry and the OPA disclosed additional documents that were previously missed. I believe it was an error that these documents were missed in the original search and that good-faith efforts had been made at all times.

In terms of my more recent work in the ministry, I was involved in the preparation of communications materials for the Auditor General's Mississauga report. I received a draft copy about one week before it was released; I received this draft from my chief of staff. I have not seen a copy of the Oakville report.

Finally, with respect to my own emails and documents, the motion passed during the last meeting is the first committee motion that encompasses my records. I understand a search is currently under way and I can assure this committee that you will be receiving many of my records. I also understand that the inboxes of previous staff in the minister's office are also being searched for this request.

With that, I open up the floor to questions, and I hope I can assist this committee with its proceedings.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Forgione. Twenty minutes to the PC side. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. We'll be handing out some documents.

You mentioned that from May 2012 until February 2013, you worked in the energy ministry's office.

**Mr. Andrew Forgione:** Yes.

**Mr. Victor Fedeli:** You said it was purely communications and issues management. Is that correct?

**Mr. Andrew Forgione:** Yes, correct.

**Mr. Victor Fedeli:** So, I understand communications, as somebody who was in the marketing field for many decades. I completely understand that communications business. I guess it's the issues management I did want to speak with you about. You, like many witnesses before you, kind of downplay your role. "I didn't really know. I was only the issues guy." I want to direct you to the first Liberal gas plant scandal document 1 of 1. This is an

email from a Dylan Marando to a group of people. The second-last line—this was talking about gas plants: "Andrew Forgione MO authority on this subject...." Is that the minister's office? Is that what MO means?

**Mr. Andrew Forgione:** Yes.

**Mr. Victor Fedeli:** So you were the guy. You were the authority on this subject. Would you agree with that statement made by someone in the Premier's office?

**Mr. Andrew Forgione:** There were different levels in each minister's office. There are policy directors, there are policy advisers, there are issues managers, there are legislative assistants. When it came to the issues management and legislative side of things, I was a resource to the Premier's office, as I could get the information quickly from the ministry.

So this is me forwarding on an email that I received from the ministry on how many gas plants we currently have in Ontario.

**Mr. Victor Fedeli:** So you were the authority on the subject of gas plants in the Ministry of Energy?

**Mr. Andrew Forgione:** No. I think it even says here "that these numbers are current and from the energy ADM responsible...." So all I did was email the energy ADM and received this chart.

**Mr. Victor Fedeli:** You don't have to downplay your role. It'll be fine.

When the minister was in estimates back in May 2012, your colleague Ryan Dunn and you were the lead staffers at the time. Is that correct?

**Mr. Andrew Forgione:** I was new at the time, so I was mostly shadowing and helping out with the process. We worked on the estimates committee process together.

**Mr. Victor Fedeli:** What was your advice to the minister about complying with the committee's request to turn over documents?

**Mr. Andrew Forgione:** I never had an opportunity to speak with the minister about specifically complying with the request. I assume that would be the role of the chief of staff, as well as the legal opinion of the ministry.

**Mr. Victor Fedeli:** So your job is to communicate and manage the issue. The issue of the day was the minister having to choose whether to comply with the committee and the request to turn over all the gas plant scandal documents or not. You're telling me that in this biggest issue that he had, you didn't have any role in that decision?

**Mr. Andrew Forgione:** I did not sit at the table advising the minister on whether or not to protect the interests of ratepayers or to comply with the privilege—

**Mr. Victor Fedeli:** So what was your advice to the minister about complying with the request of the committee? Did you have an opinion?

**Mr. Andrew Forgione:** I provided communications advice to the minister—so perhaps what he would say in the House when it came back in September. I also worked on the large number of issues that we had at estimates. Estimates didn't just revolve around the gas plants. We also had a number of other issues that we were focusing on.



0840

**Mr. Victor Fedeli:** Were you the person who recommended not giving the documents to the committee?

**Mr. Andrew Forgione:** No, I was not.

**Mr. Victor Fedeli:** Then who did advise the minister not to give the documents that were requested by the estimates committee?

**Mr. Andrew Forgione:** I can't speculate on that, but I know the minister came before this committee and was very clear that he received advice. I think it was legal advice that he said that he received.

**Mr. Victor Fedeli:** Which legal people would we need to talk to, then?

**Mr. Andrew Forgione:** I think you've already had our director of legal, Halyna, before this committee. She could have spoken to that, perhaps, or perhaps our chief of staff at the time. I'm not 100% sure.

**Mr. Victor Fedeli:** So you think it was the legal people and the chief of staff who gave the advice to the minister not to comply with the committee's request?

**Mr. Andrew Forgione:** It definitely wasn't me, in my capacity as a legislative assistant.

**Mr. Victor Fedeli:** You didn't do it.

**Mr. Andrew Forgione:** No, I did not.

**Mr. Victor Fedeli:** Was it not your job as issues manager to identify and deal with these issues that came up in the ministry?

**Mr. Andrew Forgione:** It was, but this was a particular issue where I was not engaged. I was brand new; I started the job at the end of May. The motion was passed on the 16th of May, I think, and so by the time I arrived at the ministry, it was already well under way and there were decisions that had already been made.

I think he actually sent a letter to the committee two days after I arrived. So I did not help create that letter, and I was not involved in the deliberations.

**Mr. Victor Fedeli:** What would your recommendation have been to the minister about providing the documents?

**Mr. Andrew Forgione:** It was a very difficult decision, and I don't think I have an opinion right now on that.

**Mr. Victor Fedeli:** Who do you think made the final decision to withhold the documents that were requested by the committee?

**Mr. Andrew Forgione:** I'd say the minister had the authority to do that, and I think he made the decision.

**Mr. Victor Fedeli:** Were you in touch with anyone in the Premier's office during the time there was a request from estimates?

**Mr. Andrew Forgione:** We were in touch daily on a number of issues—I don't think specifically discussing documents. No, I don't think I was.

**Mr. Victor Fedeli:** So you're suggesting, then, that the Premier's office had nothing to do with the withholding of the documents—that it was all the minister's?

**Mr. Andrew Forgione:** I can't speculate. I wasn't involved in those discussions.

**Mr. Victor Fedeli:** You were the issues manager?

**Mr. Andrew Forgione:** I was, but I was brand new at the ministry at the time, so I was shadowing. We had a number of people engaged on this file.

**Mr. Victor Fedeli:** Who were the people engaged on the file who were in control, if not you?

**Mr. Andrew Forgione:** We had the chief of staff, who was—

**Mr. Victor Fedeli:** Some names, then, please.

**Mr. Andrew Forgione:** You've had Craig MacLennan at this committee before. He was my chief of staff at the time. He was definitely engaged on the file. He would have been the one who had more authority to at least advise the minister on this and organize the meetings where they had the discussions. I was a junior staffer at the time, and it was my first week in the office. I was not advising the minister on this committee.

**Mr. Victor Fedeli:** In your shadowing of this activity, did they provide any instruction to the minister to withhold documents, that you were witness to?

**Mr. Andrew Forgione:** No, I was more so shadowing, sitting beside the former issues manager in the House during question period, going to committee and observing how we would provide the minister with resources to accurately answer questions, that sort of thing. I wasn't privy to any conversations about specifically responding to the committee's request.

**Mr. Victor Fedeli:** So you were new on the job.

The minister was seized at the moment with a very major decision, which turned out to be one of the more major decisions of his political career, which some will say cost him his political career. Would that be a safe assumption so far?

**Mr. Andrew Forgione:** That this cost him his political career?

**Mr. Victor Fedeli:** Yes.

**Mr. Andrew Forgione:** I'm not too sure. I don't want to speculate on that. The minister made a personal decision to leave politics. I'm not 100% sure why he made that decision, but he called me and told me it was for personal reasons and he wasn't going to run in the next election.

**Mr. Victor Fedeli:** I want to talk about document 2, page 2 of 2. This is from Brian Clow in the Office of the Premier, and it's to you and to David Salter: "Hi Andrew—what's your suggested response to any questions about the potentially higher cost of the gas plants, given Colin Andersen's refusal to answer yesterday?"

Colin Andersen, of course, is the boss over at the Ontario Power Authority, and he wouldn't answer questions that the cost was going to be increased.

Can you talk us through, obviously, from the time you started, when you were merely shadowing people, to February 22—this was pretty close to when you were leaving, if I'm not mistaken.

**Mr. Andrew Forgione:** No, I left the Ministry of Energy a month ago.

**Mr. Victor Fedeli:** I'm sorry?

**Mr. Andrew Forgione:** I only left one month ago from today.



**Mr. Victor Fedeli:** Oh, okay, I'm sorry. Oh, this is when the new minister would have come on—

**Mr. Andrew Forgiione:** Exactly, yes.

**Mr. Victor Fedeli:** I apologize for the timing.

So now you're into it pretty deep. You're the guy they go to: "Hi Andrew—what's your suggested response to any questions about the potentially higher cost of the gas plants, given Colin Andersen's refusal to answer yesterday?" What do you think that means? What does that sentence mean to you? This is February 2013.

**Mr. Andrew Forgiione:** Yes. We had a new minister coming in, a new Premier, and I think Brian was asking my opinion on how to answer questions on the potentially higher costs of the gas plants, especially since the auditor was looking into it already. We wanted to make sure that any advice given to an elected official was good advice on replying to this question.

**Mr. Victor Fedeli:** So did you know then, or did Brian Clow know then, that the costs of the Oakville gas plant were going to be more than \$40 million?

**Mr. Andrew Forgiione:** I knew the auditor was looking into it, and we didn't want to come out with different numbers and we didn't want to—we wanted to make sure that we weren't speculating on it. We wanted to make sure that elected officials—

**Mr. Victor Fedeli:** I appreciate that. But did you acknowledge, then—is this an acknowledgement, in your opinion, that it's higher than \$40 million?

**Mr. Andrew Forgiione:** No. I would say that the auditor was looking into it, so we wanted to make sure that we had a strong answer, and at this time Brian was reading media reports that had different numbers every day. So he was just looking for my advice on this.

**Mr. Victor Fedeli:** So your advice is kind of interesting, actually, in terms of how you start to rephrase things here. You write back to Brian Clow in the Premier's office—this is the new Premier; this is Premier Kathleen Wynne's office now. So we're not talking about Dalton McGuinty anymore here. The documents that I'm going to start talking about, February, this is Premier Kathleen Wynne.

You now seem to put some emphasis on some words. I'm going to call them "wiggle" words. You might not like the fact that I call them that, and that's fine.

The word "cancel" is in capital letters. This is page 1 of 2 of the Liberal gas plant scandal document 2. You're writing this. "Once negotiations were complete, in July for the Mississauga gas plant and in September for the Oakville gas plant"—now, these are your words that you're suggesting they use—"the ministry and OPA officials informed the government of the final costs to CANCEL"—you put "cancel" in capital letters; that's important—"these plants. We were informed that the costs which cannot be 'repurposed'"—and you have "repurposed" in quotations—are \$190 million for the Mississauga gas plant, and \$40 million for the Oakville gas plant."

So in my interpretation is, by putting "cancel" in capital letters, that's one of the wiggle words that says

this is only to cancel, not to go ahead, and the "cannot be 'repurposed,'" in quotation marks, is your wiggling around the fact that the auditor actually comes out with \$275 million, not \$190 million, because the repurposed is \$190 million, but your minister said the total cost for cancellation is \$190 million—the total cost.

Are you suggesting—are you the one who started suggesting they subtly change the wording from "total" to "repurposed"? Is that you?

**Mr. Andrew Forgiione:** As you know, the auditor came out and took a longer-term estimate and cost calculation over the next 20 years. At the time when we announced the cancellation and the relocation of these gas plants, we announced the \$180 million and then subsequently \$190 million, versus the \$40 million, because that's just the way that the calculations were done. We didn't have the capacity and the OPA was not in the business of calculating the 20-year cost of gas plants. We have a lot here in Ontario, and if you did that for all of them, it's cumbersome.

We still don't have the right number for the Oakville gas plant, which is why the Premier called in the auditor. But in this case, it's just clear that the auditor is taking a longer-term approach, and I think we wanted to differentiate the difference between what originally the cancellation cost was and then how the auditor was taking his approach.

**Mr. Victor Fedeli:** So the auditor's approach, which everybody agrees with—your minister, your Premier, Kathleen Wynne, everybody agrees with the auditor's number. You may categorize it as the auditor took a different approach, but everybody agrees with the approach. It was the right approach. You're still clinging here in February 2013—quite recently—to \$190 million, even though at this point you already know it's \$275 million. In my opinion and in the opinion of many, you're trying to tie the \$190 million and the \$40 million to show that that \$40 million is wrong as well, that that's going to be a much bigger number because the auditor is going to take a different approach. Is that correct?

0850

**Mr. Andrew Forgiione:** We didn't know that the cost was different at this point. The auditor's report came out in April. So at this point in time, we were just making sure that any advice we gave elected officials, especially the new Premier who didn't know anything about the issue—

**Mr. Victor Fedeli:** That's not really quite true. Let's talk about why that's not quite true. The \$40 million cannot be, as you call it, "repurposed." That's only a drop in the bucket of the Oakville cost. You know that. You knew it back then, which is why you couched "Cancel," as opposed to the total cost of the gas plants—"repurposed" as opposed to the total cost of the gas plants.

We know there's \$210 million—you know it; I know it—just in turbines alone, that's going to be put into the cost. We know there are hundreds of millions of dollars in gas costs. We know there are hundreds of millions of dollars in transmission costs. You know it. You knew it



when you wrote this. You cannot tell me that you did not know that the total cost of Oakville was going to be \$40 million. Please don't insult our intelligence with that.

**Mr. Andrew Forgiione:** We also knew that there were hundreds of millions of dollars in savings from a lower net revenue requirement.

**Mr. Victor Fedeli:** Let's talk about that. The cost of Oakville, if you look very carefully at the spreadsheet from the OPA—it's \$1.1 billion to cancel Oakville minus, hopefully, \$700 million in alleged savings, which equals \$310 million. So you knew at that point when you wrote this "\$40 million" that it's not \$40 million. You can't cling to that \$40 million at this point.

**Mr. Andrew Forgiione:** At this point in time, we knew that there were costs and we knew that there were savings. It was public on the OPA's website. The OPA just hadn't done the calculations to figure out what the net present value was of those savings over the next 20 years, because that's not how we calculated the cost of our supply plans.

**Mr. Victor Fedeli:** You can't tell me that. You were with the Ministry of Energy, for heaven's sake.

In the ministry's own documents, it talks about \$200 million in transmission fees if you locate out in Oakville, \$210 million in the turbine costs. The real cost that was the question was how many hundreds of millions it's going to cost for gas to get down to the new site in Napanee. That's the real question. It was just a matter of how many hundreds of millions, not if there's going to be hundreds of millions. OPA did eventually say \$1.1 billion minus what we hope to be \$700 million in savings.

We know they were all wrong, according to the Auditor General, on their alleged savings numbers for the Mississauga calculations. You talked about that, that the Auditor General used his own set of calculations, which everybody agrees with. The OPA was wrong by 50% in many cases—some, 75%. That could be another \$350 million, if you look at it.

The point is, you knew back in February that it was not \$40 million—that you've got the "repurposed" was \$40 million. You knew way back when, your Premier knew, your minister knew, everybody knew—in fact, we had that discussion from the OPA. It was a bombshell one day. Everybody knew. You didn't know?

**Mr. Andrew Forgiione:** I didn't know.

**Mr. Victor Fedeli:** You're the comms guy and the issues management guy. Why did you put quotes around "repurposed," and why did you capitalize "Cancel" if those weren't kind of wiggle words, special words?

**Mr. Andrew Forgiione:** I would have written if I knew what it was. I wouldn't have been providing ministers with inaccurate information. That wasn't my—

**Mr. Victor Fedeli:** So you think telling them, "Stick to the \$40 million, wink, wink," is accurate information?

**Mr. Andrew Forgiione:** That's not what it says here at all.

**Mr. Victor Fedeli:** Well, "repurposed" in quotes and "Cancel" in caps: It's exactly what that says.

**Mr. Andrew Forgiione:** You've had testimony from the deputy, who said that there were costs and savings and they didn't know what they were at the time. And the first time you ever heard the gas rate charges was at this committee—JoAnne Butler in March. So we didn't know at the time. This was February.

**Mr. Victor Fedeli:** No, the first time we ever heard it was when we read one of the reports from 2010 that said if you located this anywhere else, i.e., outside of Oakville, add about \$200 million in transmission costs. Heck, I hadn't even been a member when that was written, and even I knew back then.

Let's move on. Obviously, you knew, which means your minister knew, which means your Premier knew, considering she was the one, in July 2011, who kick-started the whole negotiations with TransCanada.

Let's go to Liberal gas plant scandal document 3. We're going to go to page 2 of 2. Again, you're crafting words for the minister's apology in the House for his incorrect statement. The minister obviously made a statement in the Legislature where he denied something and had to come back with a "mea culpa." Why were you so afraid of using the word "negotiation"?

You started off using, "I would like to clarify my earlier comments on the negotiations surrounding Oakville...."

"In my comments ... The government ... was aware of the costs...." But in the final version, he took out "aware of the costs" and "negotiations." They tried to pretend they weren't involved in the negotiations when they clearly were. Even in the original draft by Melanie Francis, which went to Melanie Wright, Brian Clow and Andrew Forgiione, you knew there were negotiations and you knew you were aware of the costs. Melanie Francis wants some more time and to tone it down a bit. The final version takes out the fact that you were involved in any negotiations or that you were aware of the costs.

You've admitted you're aware of the costs, that there are more costs coming. Why would you have taken all of those out of the apology?

**Mr. Andrew Forgiione:** It says, "The government of Ontario was involved in the discussions and was aware of the contents of the" memorandum of understanding, "signed by all parties and made public."

**Mr. Victor Fedeli:** Yeah, but they took out "was aware of the costs" and—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. To the NDP side. Mr. Tabuns, the floor is yours.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Good morning, Mr. Forgiione.

**Mr. Andrew Forgiione:** Good morning, Mr. Tabuns.

**Mr. Peter Tabuns:** I just want to follow on a bit of what Mr. Fedeli was asking about here, and Liberal gas plant scandal doc 2, page 1 of 2.

Colin Andersen has said before in front of this committee that everybody knew that we were talking about more than \$40 million. We come across the costs for the turbines pretty regularly in communications from the fall of 2012. Why are you not mentioning in your messaging



that there are \$40 million in sunk costs and various other costs that are going to have to be described? Why didn't you say, "\$40 million in sunk costs; \$210 million for gas turbines"?

**Mr. Andrew Forgiione:** We were under the impression that it was \$40 million of sunk costs and then the costs in savings over the 20 years of the contract were essentially going to even each other out at the time they were making this announcement. At the time, my communications advice was reflecting that.

**Mr. Peter Tabuns:** I didn't see any documents, and maybe I missed some, that suggested that the gas turbine was going to be completely paid for in reduced payments to TransCanada. It was a very big number, that \$210 million—

**Mr. Andrew Forgiione:** This is the first time the minister's office is getting a request from this committee, as of the last meeting. So you should be receiving those records. I have records from the OPA that say that in media responses and otherwise. So you should be receiving those records.

**Mr. Peter Tabuns:** I look forward to reading them, then.

You were responsible for document production in response to Mr. Leone's motion.

**Mr. Andrew Forgiione:** I was involved in helping through the process. I was new at the time, so I was shadowing my colleague and we were reviewing documents for issues management purposes to report back to the minister's office to tell them what exactly was being released because a lot of these documents were from 2010 and 2011, so there was a new staff at the time.

**Mr. Peter Tabuns:** Kristin Jenkins indicated she delivered the OPA's responsive documents to you and Jesse Kulendran on August 24, 2012.

**Mr. Andrew Forgiione:** It was a copy of their records we asked for them to review for issues management purposes.

**Mr. Gilles Bisson:** Would you say that again, please?

**Mr. Andrew Forgiione:** It was a copy of their records. We asked to review them for issues purposes to know what was coming out in the contents. We weren't familiar with—I was still in university when these plants were cancelled. So when I was reviewing these documents, I wanted to make sure that we knew what was coming out, what was becoming public.

**Mr. Peter Tabuns:** Okay. Kristin Jenkins testified that she was told by Jesse Kulendran that the OPA had identified records responsive to the committee's motion which Ms. Kulendran said should not be disclosed. For example, Ms. Jenkins said, "[W]e were told at the meeting ... that 'SWGTA' or 'southwest GTA' was not to be considered as a proxy for Oakville—and again, that this was the approach that the ministry was using." Is that consistent with the approach you were taking?

0900

**Mr. Andrew Forgiione:** As I said in my opening statement, I wasn't involved in the discussion of code names or search terms or anything like that that they were using

in the actual searches. I think Jesse has come before this committee, and the deputy, and they've spoken to that, as well as Kristin.

**Mr. Peter Tabuns:** I think you may have misunderstood my question, then.

**Mr. Andrew Forgiione:** Oh, sorry.

**Mr. Peter Tabuns:** You didn't make up the code names. That's fair enough, but—

**Mr. Andrew Forgiione:** No, and I didn't decide which ones were going to be used in the search terms, is what I was also saying.

**Mr. Peter Tabuns:** In preparing the documents, did you follow the instruction that "SWGTA" and "southwest GTA" weren't to be searched for, weren't to be produced?

**Mr. Andrew Forgiione:** No. We were reviewing documents. I wasn't taking anything out. They were copies. So I was reviewing them and making sure that I knew what was going to be released for House book notes and for media responses, so if my press secretary called me and said, "Andrew, what is this issue on the front page of the Star?" I could respond to them and give some answers.

**Mr. Peter Tabuns:** So you were producing documents that had "SWGTA" and "southwest GTA" in them. They were seen as a relevant search term by you at the time?

**Mr. Andrew Forgiione:** I can't recall specifically, but there were definitely documents with "SWGTA" in them that I was reviewing. I reviewed so many documents at the time that I can't remember specifically if they were included.

**Mr. Peter Tabuns:** Who gave you your instructions, you and Ms. Kulendran, to follow particular search terms?

**Mr. Andrew Forgiione:** I didn't conduct any searches. The searches were done by the ministry and the OPA, as the deputy has said before this committee. My only role in the document production was to review records, copies of records and brief the minister's office on what to expect when they were released on September 24, I think, and October 12.

**Mr. Peter Tabuns:** And were you asked to look out for those particular terms?

**Mr. Andrew Forgiione:** No. I was just asked to look out for contentious records that we may need to be prepared to respond to when they went public.

**Mr. Peter Tabuns:** So you were not a decision-maker in deciding which documents were responsive and which were not?

**Mr. Andrew Forgiione:** No, I was not.

**Mr. Peter Tabuns:** You simply reviewed what came and you looked for any ticking time bomb that you had to tell the minister about?

**Mr. Andrew Forgiione:** Essentially, yes. I came in at the end of May, so at that time the search was already started. The meetings had already happened to discuss what was responsive and what wasn't.

**Mr. Peter Tabuns:** My colleague has a question.



**Mr. Gilles Bisson:** Just in response to Mr. Tabuns: In reviewing those documents, did you flag any documents that might have caused difficulty for your minister of the day?

**Mr. Andrew Forgiione:** In the House and in media questions—like that? That's what you mean by "difficulty"?

**Mr. Gilles Bisson:** Yeah. Did you see any documents that you went, "Oh, my God, this is going to be a problem," and try to flag whoever in regard to whatever line you had to use in defence of the document? Did you have any of those types of situations?

**Mr. Andrew Forgiione:** Oh, yeah. When I briefed the minister before question period, I'd bring up contentious records that I had seen.

**Mr. Gilles Bisson:** And are you aware of any of those documents after that being redacted as a result of that?

**Mr. Andrew Forgiione:** No, not that I recall, and I was not involved in the redaction—

**Mr. Gilles Bisson:** So none of the documents that you saw were ever redacted?

**Mr. Andrew Forgiione:** No, they were already ready to go to committee.

**Mr. Gilles Bisson:** I understand they were ready to go to committee. That's not my question. My question is, are you aware of any of the documents that you saw that you were reviewing that eventually were not released to the committee or were redacted in some way?

**Mr. Andrew Forgiione:** No, and I think this committee has asked for both sets anyway, so you can see which ones were redacted for what reason.

**Mr. Gilles Bisson:** I want a clear answer. In reviewing the documents, are you aware of any of the documents you looked at that were eventually pulled and not given to the committee?

**Mr. Andrew Forgiione:** None that I can specifically recall.

**Mr. Peter Tabuns:** Did you know who was determining the search terms for the documents that you were reviewing?

**Mr. Andrew Forgiione:** I know that the ministry was doing their own process and they had meetings—Jesse, when she came before this committee, I think had meetings with legal staff in the ministry to decide how to interpret the motion. I know the OPA had legal staff as well, and I think that they actually hired the services of an outside legal firm to also interpret the motion.

**Mr. Peter Tabuns:** And the chief of staff in the minister's office, other senior staff in the Ministry of Energy: Did they get involved in determining the search terms?

**Mr. Andrew Forgiione:** Not that I recall. It may have been done before I arrived at the ministry—the actual meetings—since the motion happened two weeks before I arrived. So perhaps a different staff member would be able to help you with that. But by the time I got there, the search terms were decided and the search had already started. June, I think it was, is when I went to the OPA to review documents, just for issues purposes.

**Mr. Peter Tabuns:** You were around after the first significant production of documents, and I assume you saw the response of the opposition and the third party in the House. We weren't pleased. We didn't think we'd been given the documents. What happened in the ministry when you realized that we might be very exposed here?

**Mr. Andrew Forgiione:** I think the minister originally said all the records had been released—

**Mr. Peter Tabuns:** Yes, he did.

**Mr. Andrew Forgiione:** —and sent that letter to committee. I think he subsequently came before this committee and said he had made mistakes and that the ministry had decided they missed some former staffers of the Ministry of Energy and missed some words as well. Then the deputy and Colin Andersen sent letters to the House apologizing for their mistakes and said it was in good-faith efforts. But I think the minister found out on the 28th or the 27th of September, which is when we found out that there was a possibility that there would be more records. He didn't know if there were; if there was one, if there was zero, if there were 20,000, like they actually found. We didn't know at the time. The minister just said, "Get them out the door. Do the search." So the OPA and the ministry did their searches separately, and the minister found out on October 11, the day before, that they were releasing 20,000 records to the committee. Then he said, "Write a letter to"—he didn't even say that. They wrote letters to the House, apologizing and explaining the situation—what words they missed, former staffers etc. Again, it was a very large search, and they weren't familiar with doing this at the time.

**Mr. Peter Tabuns:** And you were familiar with the code names that were used for these projects: Vapour, Vapour-lock?

**Mr. Andrew Forgiione:** I now am very familiar with them.

**Mr. Peter Tabuns:** Were you when you started reviewing these documents last May?

**Mr. Andrew Forgiione:** Like Project Vapour and those?

**Mr. Peter Tabuns:** Yes.

**Mr. Andrew Forgiione:** Those ones I was, because they were ministry ones. I wasn't familiar with Fruit Salad and Apple and Banana because those were OPG terms. I wasn't familiar with those ones, and I had to ask individuals when I found that word.

**Mr. Peter Tabuns:** On May 16, Mr. Leone moved a motion that called for "the Minister of Energy as well as the Ministry of Energy and Ontario Power Authority to produce, within a fortnight, all correspondence, in any form, electronic or otherwise, that occurred between September 1, 2010, and December 31, 2011, related to the cancellation of the Oakville power plant as well as all correspondence, in any form, electronic or otherwise, that occurred between August 1, 2011, and December 31, 2011, related to the cancellation of the Mississauga power plant."

In your minds, did it matter how the documents were labelled?



**Mr. Andrew Forgione:** Sorry, can you be more specific?

**Mr. Peter Tabuns:** Did you take a broad interpretation of that request for documents, or did you try to take a narrow interpretation of those documents?

**Mr. Andrew Forgione:** The ministry led the search in the Ministry of Energy, and the OPA led their search and decided on their code words and their search terms and what they were going to be using, so I'm not 100% sure. I know legal was heavily involved in interpreting this motion for both. I was not at that table for those discussions.

**Mr. Peter Tabuns:** And if documents weren't disclosed that said "Project Vapour" on them or because they said "southwest GTA," you'd agree that they should have been disclosed?

**Mr. Andrew Forgione:** Yes. At this point in time, they should have definitely been disclosed, and I think they should have been. I'll leave it at that. But again, I wasn't in a position to make those decisions at the time, and I was not at the table, so it wasn't up to me. I understand that legal was involved at the ministry and the OPA, and maybe they missed that term in the first search but they found it in the second search. All I know is that the letters that they both sent to the committee and to the House have explicitly and profusely apologized to the Legislative Assembly for their mistakes, and they have completed their searches for this particular motion. And I know that they have now started on this—

**Mr. Peter Tabuns:** Okay. I'll turn it over to my colleague.

**Mr. Gilles Bisson:** Explain to me what you mean by you relying on people in order to interpret the motion from the committee. What do you mean by "interpret"?

**Mr. Andrew Forgione:** I wasn't at the table for these discussions, so I'd be speculating on exactly what they were doing in their meetings and how to interpret this motion.

**Mr. Gilles Bisson:** But what do you mean by "interpret this motion"?

**Mr. Andrew Forgione:** I think this motion was dropped on the desk of the deputy and the CEO of the OPA, and they were deciding how to respond to it, is what I meant by "interpret."

**Mr. Gilles Bisson:** Were you aware that a request by a committee for documents is equal to a summons of the court?

**Mr. Andrew Forgione:** At the time, I was not, but I know that Minister Bentley had a responsibility. He was trying to balance out both the interests of taxpayers and his responsibilities to the committee.

**Mr. Gilles Bisson:** That's not my question. In the conversations you overheard within the House leader's office and others, was there knowledge on the part of those people around you or yourself that, in fact, a request by a committee for documents must be complied with?

**Mr. Andrew Forgione:** The minister knew. We knew. The minister wrote to committee and said, "I have these two balances."

**Mr. Gilles Bisson:** So what was the interpretation about? I'm a bit intrigued by the word "interpret."

**Mr. Andrew Forgione:** Because the minister said it's not a matter of if but when the documents were going to come, so the search was still being done.

0910

**Mr. Gilles Bisson:** No, we got into this whole mess because the minister didn't want to release the documents initially, and only when it was faced with contempt did the documents get released.

So I go back to: At that time when you were working within the minister's office, were people aware—and I think what you said was "yes"—that in fact a request by the committee has to be complied with?

**Mr. Andrew Forgione:** The minister knew it was a serious request, and he wrote to the committee saying, "I understand my responsibilities."

**Mr. Gilles Bisson:** So what was the interpretation about? What were they trying to interpret—what not to give up?

**Mr. Andrew Forgione:** No. They were probably trying to—again, I can't speculate on what they were discussing, but what I meant by "interpret" was that they received this massive motion that would cost \$1 million to do and require ridiculous amounts of human resources—

**Mr. Gilles Bisson:** Were you a party to any conversation in regard to withholding some of the documents and not releasing those documents?

**Mr. Andrew Forgione:** No. The ministry led the search—the Ministry of Energy.

**Mr. Gilles Bisson:** Nobody ever talked about it in your presence—

**Mr. Andrew Forgione:** I came to the ministry at the end of—

**Mr. Gilles Bisson:** —over the coffee cooler—

**Mr. Andrew Forgione:** No. The ministry—

**Mr. Gilles Bisson:** Were you in a dome of silence? Did you walk around like Maxwell Smart in a glass bubble, or what?

**Mr. Andrew Forgione:** No. I reviewed the documents. They were already copies of the documents that were going to go to committee once negotiations were complete.

**Mr. Gilles Bisson:** I'm having a bit of a problem with your comment around interpreting, because it is clear there is a privilege that exists within this House, both for the House and for the members collectively, and one of those is that you have the full right as a committee to request documents and it must be complied with. You have now said that the minister was aware that that was a fact, that in fact you have to comply with a committee request, but you guys were trying to interpret what the hell the motion meant, and I guess I'm having a bit of a problem squaring around what you mean by "interpreting." What were you trying to interpret—what not to give up, what to give? What do you mean by "interpret"?

**Mr. Andrew Forgione:** The ministry led the search in the Ministry of Energy. Again, I was not at the table, but



what I assume would happen is when they receive a motion of this magnitude, they would say, “How are we going to respond to this? What search terms are we going to use? Who are we going to search?” Clearly the ministry revised that once, and the OPA revised that twice.

**Mr. Gilles Bisson:** At what point did the minister change his mind about the release of the documents?

**Mr. Andrew Forgione:** He never did. He said, “When these negotiations are complete and releasing documents won’t hurt the position of the province, I’m happy to release them,” and he did right after—

**Mr. Gilles Bisson:** But the minister, as a lawyer, and the minister, as a minister of the crown, would understand that a committee, once requesting documents, that that motion had to be complied with. So what drove him and what drove that office in not releasing those documents, when they knew that the request from the committee had to be complied with?

**Mr. Andrew Forgione:** I can’t speculate on the minister’s decision-making.

**Mr. Gilles Bisson:** Were you party to any discussion that discussed that item?

**Mr. Andrew Forgione:** No, I was not, as I—

**Mr. Gilles Bisson:** Did you overhear any discussions that discussed that item?

**Mr. Andrew Forgione:** No.

**Mr. Gilles Bisson:** And remember, you’re under oath.

**Mr. Andrew Forgione:** I understand that.

**Mr. Gilles Bisson:** You’d better understand it, because if we find out otherwise, you could be held in contempt.

**Mr. Andrew Forgione:** Yes. I was a junior staffer at the time. It was my second week at the ministry.

**Mr. Gilles Bisson:** I understand you were a junior staffer.

**Mr. Andrew Forgione:** I wasn’t advising the minister on this particular issue.

**Mr. Gilles Bisson:** I’m sure that—

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson, we appreciate your enthusiasm, but you’re kind of threatening the witness. I’d invite you to—

**Mr. Gilles Bisson:** No, I’m not threatening. I’m reminding the witness that he has a responsibility to tell the truth to this committee, and if not, he could be found in contempt. That is just the rules of how this place works. I’m just reminding him so he’s aware of the gravity of the answers to the questions I’m looking for.

I understand you’re a junior staffer, and I understand that you were not the person making the big decisions in that office—I get that—but as a member in that office, you had to overhear some of the discussions that were going on. I ask you again: Did you hear any conversations in regard to not releasing the documents as per the committee’s request?

**Mr. Andrew Forgione:** I was not privy to those discussions. The minister made them—

**Mr. Gilles Bisson:** That’s not what I’m asking. I’m asking: Did you overhear any conversations in the time

that you worked for those offices—reasons why not to release those documents?

**Mr. Andrew Forgione:** No, not that I can recall specifically, no.

**Mr. Gilles Bisson:** Okay. How much time do we have?

**The Chair (Mr. Shafiq Qaadri):** Three minutes.

**Mr. Peter Tabuns:** If you knew that there was a lower payment going to TransCanada Enterprises, what other details did you know?

**Mr. Andrew Forgione:** I read the memorandum of understanding, and I knew that we had taken on gas management delivery costs, or the OPA had. I knew that they were receiving a lower net revenue requirement. I knew that they were taking on the gas turbines as well that were already purchased by TransCanada. I knew that the gas management delivery costs weren’t calculated at that time. The OPA hadn’t calculated. There was a formula in the contract which I didn’t know how to do, and I think the OPA has actually struck a working group and told the committee that they would have those numbers by 2014, just to show how complex they really are. So we didn’t know. At the time, we thought that they balanced out the savings and the costs, especially with the lower net revenue requirement. I think that was the reason that Deputy Imbrogno, when he came before this committee, said that they reduced the net revenue requirement to take on those additional responsibilities. The idea behind that was to balance them out so there was an equal contract with the \$40 million of sunk costs already for zoning and architectural work for the actual plant.

**Mr. Peter Tabuns:** So you knew about the gas demand management costs—

**Mr. Andrew Forgione:** Not the number. I didn’t know what the number was.

**Mr. Peter Tabuns:** No, no. You’ve said that; I understand that. And you knew there were gas turbines. You knew about the cost for the site, for—

**Mr. Andrew Forgione:** Yes. That was in the—I think it was around \$25 million. But there was a stipulation where it was only up to \$5 million or something like that. It was in the contract, though. I read it.

**Mr. Peter Tabuns:** And knowing all these other costs were out there to be determined, the number you gave your minister to carry forward was \$40 million.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** And we heard consistently, “There’s only one number. There’s \$40 million.” But you actually knew that there were a variety of other numbers that were circulating out there, a variety of other factors that were going to have impact on this.

Nodding your head is not—

**Mr. Andrew Forgione:** No, no. We did, but as I said, we thought the costs and the savings balanced out at the time. We thought that the lower net revenue requirement offset the gas management delivery costs and the turbines, because we had paid the turbines in December, I think.



**Mr. Peter Tabuns:** But that was all a guess on your part.

**Mr. Andrew Forgione:** It wasn't on my part; it was the OPA's guesses at the time—

**Mr. Peter Tabuns:** On part of the government as a whole, because we could tell \$40 million was not going to be the number. Anyone could look at it and say, "You aren't going to settle a \$1.2-billion deal for a \$40-million settlement. It's just not on."

**Mr. Andrew Forgione:** I didn't know—the plant wasn't built, so we thought that they maybe had a different costs-and-savings formula.

**Mr. Peter Tabuns:** And no one in your shop thought that \$40 million seemed like—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Mr. Delaney, 20 minutes.

**Mr. Bob Delaney:** Well, thank you very much, Chair. Good morning, Mr. Forgione. I want to just go through a number of things in your background and do it in kind of an organized and logical way, so bear with me for a few minutes. Just to set out again the timeline of your employment in the Minister of Energy's office, when did you start working there?

**Mr. Andrew Forgione:** The end of May 2012.

**Mr. Bob Delaney:** May 2012. So that means—I think you covered this earlier—that the estimates motion asking for correspondence related to the gas plants would not have captured any of your documents because the motion asked for correspondence up to December 2011. Correct?

**Mr. Andrew Forgione:** Correct.

**Mr. Bob Delaney:** Two weeks ago, this committee passed a motion for documents from the Ministry of Energy from January 1, 2012, to August 2013. If I understand this correctly, that would be the first committee motion that is applied to you. Is that also correct?

**Mr. Andrew Forgione:** Correct.

**Mr. Bob Delaney:** Would you have had documents responsive to that motion?

**Mr. Andrew Forgione:** Definitely, and this committee will be receiving those records.

**Mr. Bob Delaney:** Okay. On March 5 of this year, government members of this committee moved a motion directing a government-wide search of all documents related to the relocations of the two gas plants in Oakville and Mississauga. That motion would have required all government ministries, ministers' offices, Cabinet Office, the Premier's office and the OPA to conduct a search. Had that motion passed, would you have provided us with any documents you may have had by now?

**Mr. Andrew Forgione:** Yes, definitely.

**Mr. Bob Delaney:** You recently moved to the government House leader's office. What happened with your files from the Ministry of Energy during that transition?

**Mr. Andrew Forgione:** I left them at the Ministry of Energy.

**Mr. Bob Delaney:** So that would mean that your Ministry of Energy documents have been appropriately

retained and would be searched by the Ministry of Energy in response to the recent motion asking for energy documents from 2012 forward. Correct?

**Mr. Andrew Forgione:** Correct.

**Mr. Bob Delaney:** Going back to the spring of 2012, when the estimates committee moved a motion asking for documents related to the two gas plants from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority, as we're aware, at the time, negotiations were ongoing with the proponents of both the Oakville and the Mississauga power plants. Was it your understanding, at the time, that those negotiations were commercially sensitive?

**Mr. Andrew Forgione:** Yes, it was. I wasn't directly involved with negotiations or particular discussions about responding to the actual committee's request, but we were told by—I was told by—higher-up people in the minister's office that we were being advised by legal—and the OPA was of the same mind, as well—that these documents were commercially sensitive and solicitor-client privileged. So putting them forward—I think the Auditor General said before the public accounts committee—I believe I'm correct here—that he would wait to conduct a study on the Oakville plant until the negotiations were completed, because he also understood that there may be sensitive information there that may hurt the negotiations if he received those records.

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**Mr. Bob Delaney:** Okay. So, then, you're confirming that your understanding was that there would be some very real and tangible risks associated with the release of information that bore upon negotiations—at that time, still in progress—before those deals were finalized.

**Mr. Andrew Forgione:** Yes. I wasn't a lawyer, and I'm still not a lawyer, but we were under that impression.

**Mr. Bob Delaney:** Okay. Earlier, as you were discussing things with Mr. Bisson, you were talking about the interpretation of a motion. I would assume that that meant that the Ministry of Energy would be figuring out how to conduct a search, such as, for example, which staff members' records would need to be searched, what keywords should be searched and this sort of thing. Would that be correct?

**Mr. Andrew Forgione:** Yes. I must have miscommunicated. All I meant was that this motion was going to be given to the ministry and the OPA, and that they were going to need the time to learn how to conduct the search. From my discussions with the deputy, this was the largest search they've ever received, so I assume it took a lot of time for them to understand exactly how to respond to it and who to search, and it took them a couple of times to get it right, as evidenced by the letters that they've sent the committee and the House.

**Mr. Bob Delaney:** The Ontario public service receives an estimated one million emails a day, so it's not a surprise that the Ontario public service would then need a plan for how to search through, quite literally, hundreds of millions of records.

**Mr. Andrew Forgione:** Correct. I think the OPA has actually written this committee, and the same with the



IESO, asking for more time and outlining the potential costs to the committee—to the actual OPA, I meant—to conduct this search. So they are not small endeavours. It typically takes a lot of time and a lot of human resources. As the OPA has said before when they've come before this committee, they're not in the business of document production; they're in the business of energy, so it's difficult for them to learn how to do it. But they've done it in a very quick manner, and now they're going to need a little bit more time for this search, apparently.

**Mr. Bob Delaney:** Would you clarify your role with respect to the production of documents to the estimates committee?

**Mr. Andrew Forgione:** As I said in my opening statement, my only role was to review records for issues management and communications purposes, whether it be for the House and the minister's question period or whether it was for media calls and helping my press secretary respond to media. I just wanted to get familiar with the issues and report back to the minister's office so that we knew what the issues were, because we knew it would be a top issue in question period come September.

**Mr. Bob Delaney:** You were asked a little bit about a former witness to this committee named Jesse Kulendran. Jesse Kulendran was here under oath, and testified that she had done nothing inappropriate and did not tell the OPA to withhold documents. In fact, the Deputy Minister of Energy—who Mr. Fedeli confirmed, to use his words, was a credible and very solid witness—testified before this committee that he believes Ms. Kulendran's summary of events.

The deputy testified—and I'll use his words—"I never directed Jesse to go to the OPA and ask them to exclude documents. I never myself directed the OPA to exclude any documents. When I talked to Jesse about the allegations, she told me ... that she did not direct the OPA. I have no reason to not believe what Jesse" had said.

Secretary Wallace, in fact, launched an investigation into the allegations in the memo, and confirmed that there was no evidence that Ms. Kulendran had acted inappropriately. Furthermore, when asked by the media during a news conference here at Queen's Park about the memo and the allegations, Colin Andersen would not confirm that anything inappropriate had happened; that there appears to have been some miscommunication, but, ultimately, the OPA was responsible for its own search and provided the responsive documents to the committee.

Would the OPA being responsible for its own search of its own documents be in accord with your recollection?

**Mr. Andrew Forgione:** Yes. The OPA was responsible for their own document production and replying to the committee's request, just like the ministry was in charge of doing it for the Ministry of Energy.

*Interruption.*

**The Chair (Mr. Shafiq Qaadri):** I'd just invite folks to please either turn their cellphones off or at least get better ringtones. Thank you.

**Mr. Bob Delaney:** I don't think you'll find any shortage of seconds to that motion.

In May of 2011, Dr. Ann Cavoukian stated, in her words, "Our position has consistently been that a system designed to give ministers and senior officials a 'heads up' about the disclosure of potentially controversial records is acceptable. These processes or systems are designed to ensure the timely notice and communication of relevant details of the request and the related records, in order to assist the minister or senior officials when responding to questions in the Legislative Assembly or from the media or members of the public."

So given your role, which I understand is pretty limited, you would be, then, well aware that, ultimately, the estimates committee received 56,000 documents from the Ministry of Energy, the Minister of Energy and the OPA, and that given the volume, either errors and/or omissions were made and a number of document releases occurred.

The testimony from the secretary of cabinet, from ministry staff and the OPA, has been consistent that the searches were done in good faith. In your recollection, would that be correct?

**Mr. Andrew Forgione:** I wasn't involved in the actual searches. The ministry conducted those, and the OPA conducted their own. But after hearing the deputy come before this committee and having heard Peter Wallace come before this committee, I have no reason to doubt their testimony, and they have both said that they had good-faith efforts to comply with the motion. I don't see why they wouldn't. And they both sent letters to the committee and to the House, stating in these letters—that explain the situation and how they missed search terms, as it was their first time conducting a search this large. I think—that's what I believe.

**Mr. Bob Delaney:** You were around at various times when people were doing their best to comply with document requests to this and to the estimates committee. Do you think that there are any—is there any truth to the allegations that this was not done in good faith?

**Mr. Andrew Forgione:** There have been multiple letters to committee and to the House explaining the situation and how search terms and code names were missed and how former staff had their inboxes missed, so I don't think there's any reason to doubt it. This committee has heard ample testimony. I think there have been over 50 witnesses and over 80 hours of testimony. But I think they've heard quite a bit of evidence that shows there's no reason to doubt the public service. I think the secretary of cabinet said the same thing when he came before this committee.

**Mr. Bob Delaney:** When you were in the Ministry of Energy, you would have met Deputy Minister Serge Imbrogno?

**Mr. Andrew Forgione:** Yes.

**Mr. Bob Delaney:** When he was testifying before the committee, Deputy Imbrogno described the incredible amount of time and resources that went into searching for the documents, identifying and compiling documents that were responsive to the estimates committee motion. He told us, and I'll use his words, "We basically shut the



ministry down for that search period ... a lot of the time and effort was spent with policy legal staff going through and determining what is responsive and what is non-responsive ... that took a lot of time and effort, but the ministry basically worked 24/7, and that was the priority for the ministry.” Does that sound like an accurate description of what went on in the Ministry of Energy when the ministry was responding to the estimates motion?

**Mr. Andrew Forgione:** Yes, and I think the same with the OPA. They both put a lot of resources into this, and I remember at the time a lot of the deputy minister’s office staff being very tired after working so difficult on weekends and late at night to respond to this committee’s request. It was a priority for the ministry and for the minister to accurately respond to this committee’s request. But as this committee has heard, it was a very difficult and challenging motion to respond to, since it covered a very large time period. They’ve both subsequently written to the committee and to the House, talking about the issues that they’ve had throughout the process.

**Mr. Bob Delaney:** All right. I just want to move into some of the costing of the cancellations of the two plants, or such as we know what the costing was. To recap some of the conversations you’ve previously had here in the Standing Committee on Justice Policy, were you involved in any discussions where it was determined that the sunk costs for Oakville would be one number and the sunk costs for Mississauga would be another number?

**Mr. Andrew Forgione:** No. As I said in my opening statement, I was not at the table. I was not at the negotiating table. I was not involved in the numbers being selected to be used. Those were from the experts at the ministry and the experts at the OPA. We didn’t have the capacity in our office, as I said in my opening statement, to calculate these ourselves.

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**Mr. Bob Delaney:** In other words, all the information on costing came from the Ontario Power Authority.

**Mr. Andrew Forgione:** Yes. They were at the negotiating table, as were government officials, but the experts at the Ontario Power Authority and in the ministry provided us with those numbers.

**Mr. Bob Delaney:** That pretty much lines up with what we’ve read in the emails and heard from the testimony here at the committee.

When the CEO of the Ontario Power Authority, Colin Andersen, attended the committee and discussed the Mississauga costing, he said, “We did provide them with the numbers. That is what you would expect.”

In fact, an email from Mr. Andersen from July 2011 to the ministry office at the Ministry of Energy confirms that he provided them with the \$180-million figure for the sunk costs of relocating the Mississauga plant.

For Oakville, Colin Andersen had told the committee, “It’s true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized...”

From your experience, does that sound accurate?

**Mr. Andrew Forgione:** Yes, and those emails will be coming forth in the upcoming motion as well, so there will be emails showing where we received our numbers.

**Mr. Bob Delaney:** Again, the numbers came from the OPA.

**Mr. Andrew Forgione:** Yes. Again, I was not at the table to receive those numbers. I received them from my superiors, but—yes.

**Mr. Bob Delaney:** Based on the information that you had, limited as it was, what was your understanding about whether there would be any additional future costs for the two plants beyond the sunk costs?

**Mr. Andrew Forgione:** We received briefing decks that showed the numbers \$190 million and \$40 million and explained, as was public in the memorandum of understanding on the OPA’s website, the structure of the contract and what the OPA was taking on versus what they were receiving a savings on. Both plants had a lower net revenue requirement, which projected out as savings over the next 20 years.

Again, I must stress that the OPA was not in the business of calculating the incremental costs of running a gas plant over the next 20 years. We have 19 in this province, and a lot of other sources of generation. That’s just not the way that they did it. So it took them a while. They struck a committee to do it for 2014, as I understand it, to make sure that they have the correct gas management and supply numbers as well.

That’s the structure that we had at that time, and it was all public on the OPA’s website. The briefing decks, that should also be coming to this committee, highlight those numbers.

I was involved in Minister Chiarelli’s briefings with the ministry, and those numbers said “\$190 million” and “\$40 million.” Those documents will be coming to committee in the upcoming request.

**Mr. Bob Delaney:** Just to talk about some of your recollections over the past few years: I would assume that, as a staff person, you would have paid close attention to the policies and the commitments of the other two parties as well as the government. Would that be correct?

**Mr. Andrew Forgione:** Correct. I spent a lot of time—a little bit too much, I’d say.

**Mr. Bob Delaney:** Almost every witness before the committee has confirmed that there were very clear commitments by all three parties to either cancel or to relocate the two plants. That certainly permeated down into the two communities as well. In fact, Mayor Hazel McCallion said to us, “The impression that was certainly given beyond a doubt ... I think all parties would have cancelled it”—it referring to the Mississauga gas-fired generation plant.

When he was here at the committee, Oakville mayor Rob Burton told the committee that he had “won promises from all parties to stop the proposed power plant.”

With the transcripts and campaign literature and robocall scripts that we have, they highlight the commitments made by both opposition parties to cancel the plants.



In your role, you would be fully aware that all three parties had promised to either cancel or relocate the Mississauga or Oakville plants, correct?

**Mr. Andrew Forgione:** Correct. We have lots of pages of quotes that will also be coming forth in the next motion, showing all three parties committed to cancelling the plant.

**Mr. Bob Delaney:** Let me ask you a very direct question, then, on record-keeping. Were you ever directed by your former chief of staff to delete any emails?

**Mr. Andrew Forgione:** No.

**Mr. Bob Delaney:** Former Premier McGuinty had testified that there had been a lack of adequate training for staff in this area. In his June 7 response to the Information and Privacy Commissioner's report, the former Premier stated, and I'll use his words, "I agree with the commissioner that despite some efforts, we did not devote adequate resources and attention to ensuring all government staff in all ministries and in the Premier's office were fully informed of their responsibilities. This inadequate training made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated."

Would you agree with the former Premier that there was a lack of formal training with respect to how to properly manage records?

**Mr. Andrew Forgione:** Yes, especially at the time that I came to the ministry, at the end of May. It was an odd time for me to come, just at the end of a legislative session and during estimates committee as well. So I didn't receive training, I don't think, until Premier Wynne came in, I think in April, when we received specific training to document retention and the processes.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** All that said, I'm sure it was apparent to staff that they were not required to keep every single record.

**Mr. Andrew Forgione:** I think that was apparent at the time.

**Mr. Bob Delaney:** Okay. Chair, I think I'm going to stop there and I'll pick it up in the next round.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Yakabuski, 10 minutes.

**Mr. John Yakabuski:** Thank you, Mr. Forgione, for joining us today. Listening to your answers to the member from the government side, I'm sure your bosses will be happy with you. You've answered the lob-ball questions just the way they wanted you to do it. However, I have some other questions for you.

You said in your opening statement, talking about emails that were not disclosed by both the OPA and the ministry, that it was an error that these documents were missed in the original search and that good-faith efforts had been made at all times. We have sworn testimony from a vice-president of the Ontario Power Authority that they were directed to withhold documents, from Jesse

Kulendran, who you are named with in other documents, so you must have a relationship with Jesse Kulendran of some working kind. It was clear in the sworn testimony of the vice-president of the Ontario Power Authority that they were directed to withhold documents. Were you aware of that?

**Mr. Andrew Forgione:** No. And you've also had sworn testimony from the deputy and from Jesse. I know both of them. I don't know Kristin as well, but I think both of them have said it was a miscommunication, and I think the deputy has said he has no reason to doubt his employee, Jesse, when she came before this committee and gave her sworn testimony.

**Mr. John Yakabuski:** I'm not asking about his testimony. I'm asking about yours.

**Mr. Andrew Forgione:** All I would know is from what they came to committee and said. I wasn't involved in those discussions.

**Mr. John Yakabuski:** It's clear from your testimony today to my colleague Mr. Fedeli and also to questions from the New Democrats that it was widely known that there were costs in excess of the so-called unrecoverable or sunk costs in both the power plants.

**Mr. Andrew Forgione:** And savings, yes.

**Mr. John Yakabuski:** There were costs. We're talking about costs. You knew and your masters knew, yet the intent or the continued mantra of the government was to insist on only disclosing the sunk costs. In fact, I want to refer you to document 4 of the Liberal gas plant scandal file here, 1 of 1, an email from yourself to Melanie Wright and Samantha Grant—Melanie Wright of the Office of the Premier of Ontario and Samantha Grant of GHLO. I'm not sure what that is.

**Mr. Andrew Forgione:** Government House leader's office.

**Mr. John Yakabuski:** Government House leader's office—where you are now; correct?

**Mr. Andrew Forgione:** Correct.

**Mr. John Yakabuski:** One of the advices is, "We can add in a line on 'these documents verify the sunk costs of \$40 M,' but I don't want the P saying a number in the House"—P meaning Premier.

**Mr. Andrew Forgione:** Correct.

**Mr. John Yakabuski:** This email is from April 11, 2013. You people were well aware, as the Premier was well aware, because we have documentation showing that, that everyone knew clearly that there were costs in excess of that. Was this clearly an attempt to continue to mislead the public with regard to the true costs of these cancellations, hoping that this would all blow away? Why would you continue to advise that the Premier not use those numbers in the House?

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**Mr. Andrew Forgione:** Because at this point in time I had seen a copy of the draft Auditor General's report on Mississauga. I received it for issues purposes to prepare speaking notes in response to it and help work on our press conference the next day etc., etc. So at this point in time I didn't want the Premier saying numbers in the



House on either plant because we were already aware that the auditor took a different approach in calculating his numbers over the next 20 years. I don't think either of these staff members, Melanie or Samantha, were aware of the auditor's report at the time—the numbers in them. So I was just providing my advice.

**Mr. John Yakabuski:** Until the auditor's report came out, that was the number that government officials continued to cite, including elected members. This would also have exposed previous statements in the House as having been either deliberately misleading, or at least grossly in error, for elected members including cabinet ministers who had insisted that that number was in fact \$40 million.

**Mr. Andrew Forgione:** The number is still correct. It's just that the auditor took a different approach over the 20 years on how much ratepayers would be charged over the 20 years of the contract. The sunk costs are still correct. I think the auditor verified them in his opening statement, saying that \$190 million is the correct number for the taxpayers of Ontario, and that—

**Mr. John Yakabuski:** He also implied very clearly that the approach of the government was not one that was—I'm not quoting him but paraphrasing—with the intent of disclosure. Clearly, the intent was to minimize, to as great a degree as possible, what the actual costs were to the public, whether they be sunk costs and/or costs passed on to the taxpayer. It was clearly a conspiratory mindset in the offices of the government, and it would have been in the offices that you worked, that they were going to try to continue to forward this number as being “the number that we want the public to get in their minds that this is what it's going to cost, and if we say it and repeat it often enough, the coffee house and the water fountain talk is going to be that, ‘These are the numbers.’”

We actually even had members of the media starting to accept those numbers and actually quote them in their stories. Who in your ministry at that time—the Ministry of Energy and then subsequent ministries since then—took it upon themselves? I know that Mr. Delaney talked about the energy that has been spent trying to retrieve documents—I suspect it takes a considerable amount of time and energy to conjure up a cover-up of the magnitude that you people have perpetrated. Who insisted that we continue to use these numbers both in the media, in the public and in the House, so that we could try to create a mindset in the public that these were in fact the true numbers and then whatever the opposition said would be just kind of flying over their heads? Somebody was in charge of that. Was it you? I don't think so.

**Mr. Andrew Forgione:** I think what the minister said when he came before committee—Minister Bentley. I still call him that because he was my first boss at Queen's Park. When he came before this committee, he said, “With all due respect to Colin, I asked for whatever costs that we can get. I want to go out with a number when he wanted to announce the relocation of the plants.” The

minister wanted to say the costs and that those were the costs that the OPA provided to the ministry at the time and that those records will be coming forward in the upcoming document request motion.

What the auditor did for the Mississauga plant was to take a very different approach that the OPA doesn't typically do when procuring power. When they're procuring power, they don't calculate out, every single year, how much it's going to cost ratepayers over the next 20 years. It's just not the way they do it. They negotiate, they get a price for power and then they build the plants. I can't speak to the specifics of what they do but I knew that at the time when we were announcing this relocation—

**Mr. John Yakabuski:** So you don't know? You don't know who came up with that?

**Mr. Andrew Forgione:** There was nothing to come up with.

**Mr. John Yakabuski:** We have a document, a letter, that was signed by then-Minister Brad Duguid, prepared by—he testified before the committee a few weeks ago—that clearly indicated that—the minister signed a letter. It clearly indicated that they knew there were costs over and above the sunk costs. Now, are you implying that there's no communication between the transition from one minister to another? That the minister that you worked for, Mr. Bentley, was not aware that there were costs other than the sunk costs when he was making his initial statements? I don't think anybody is going to believe that.

**Mr. Andrew Forgione:** For which facility?

**Mr. John Yakabuski:** For either facility.

**Mr. Andrew Forgione:** All the notes and records I provided to the minister were from the experts at the ministry and the OPA. If there were added costs at the time, they weren't calculated and we weren't aware of them. So what the minister said in the House was in good faith.

**Mr. John Yakabuski:** So when Brad Duguid wrote a letter, and clearly indicated in the letter that he knew there were costs over and above—

**Mr. Andrew Forgione:** I didn't see Minister Duguid's letter, so I can't speak to it. I apologize.

**Mr. John Yakabuski:** Well, we had it—it's been presented before this committee, that clearly there were costs over and above. That his successor would not be aware of that—that's very difficult to believe.

**Mr. Andrew Forgione:** I apologize; I can't speak to the specifics of that discussion. How the ministers talked and what information—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski.

Mr. Tabuns, 10 minutes.

**Mr. Peter Tabuns:** Thank you, Chair. Mr. Forgione, you were political staff in Mr. Bentley's office for a number of months.

**Mr. Andrew Forgione:** Yes, for a number of months, until Minister Chiarelli came in, and then I worked for him.



**Mr. Peter Tabuns:** Did political staff in the minister's office ever write emails to each other about the gas plant issues?

**Mr. Andrew Forgione:** I would assume so. We wrote to each other regularly about a number of issues, and email was a form of communication—a lot of meetings and other various avenues as well. But I'd say yes.

**Mr. Peter Tabuns:** So when documents were produced—because you started in May and so you were there for the initial production and then you were there for the major production in September and then the next round—

**Mr. Andrew Forgione:** Yes.

**Mr. Peter Tabuns:** We never got a single email out of the minister's office. Didn't that strike you as strange—that although the minister's office was named to produce documents, there wasn't one piece of paper that came out of the minister's office, and none of the staff?

**Mr. Andrew Forgione:** My minister's office never received a request from this committee. My particular one—the requests were from 2010 to 2011, so I'm not sure who worked in the minister's office at the time. But when I was reviewing records, I did see emails, including minister's office staff, in them, as well as OPA staff and legal staff and ministry staff as well. I'm not privy to who provided records to the ministry when they were doing their search, so I can't specifically comment on it. I just reviewed the records.

**Mr. Peter Tabuns:** So when you reviewed records, did you know that they were sourced from the OPA, for instance?

**Mr. Andrew Forgione:** Yes. The OPA, yes, and the ministry, yes. But it was one individual in the deputy minister's office who printed them all off, so their name appeared at the top. So I wasn't familiar with who actually was giving over records.

**Mr. Peter Tabuns:** But you found it easy to distinguish that Ontario Power Authority was one group.

**Mr. Andrew Forgione:** Yes.

**Mr. Peter Tabuns:** And Ministry of Energy was another group?

**Mr. Andrew Forgione:** Yes.

**Mr. Peter Tabuns:** And you never saw a pile for the minister's office?

**Mr. Andrew Forgione:** No, they would have been included in the ministry, I would have assumed. I wasn't privy to who provided the records, though.

**Mr. Peter Tabuns:** Who gave you your instructions, when it came to reviewing emails that have been produced, to look for ones that were problematic?

**Mr. Andrew Forgione:** We had a communications team discussion about it and tried to predict what type of issues would arise. Then it was up to my colleague and I to review the records and report back to our superiors on what to expect.

**Mr. Peter Tabuns:** Who was on that communications committee managing that?

**Mr. Andrew Forgione:** It would have been my colleague Ryan, who's already been mentioned a number of times. He and I were the ones reviewing the records and reporting them back. It was actually pretty much the entire office. There were policy advisers, there were communications advisers, everyone who should have been aware of these issues, because we knew it would be gripping the Legislature in September.

**Mr. Peter Tabuns:** So you met with just about everyone who was involved with this issue in the minister's office.

**Mr. Andrew Forgione:** In the minister's office, it was my job as the one who prepared the minister's notes in the morning to have a grip on what was being discussed, what issues there were. So, yes, I'd meet with a policy adviser on a wind farm that had an issue and someone else on a gas plant.

**Mr. Peter Tabuns:** That's okay. But in terms of this production, you met with all the minister's staff.

**Mr. Andrew Forgione:** To discuss what was being released?

**Mr. Peter Tabuns:** Yes, and to decide how to deal with it.

**Mr. Andrew Forgione:** There was nothing to decide about how to deal with it; it was just the review. So we said that we were going to be looking for these specific things to prepare for media calls.

**Mr. Peter Tabuns:** Did you come across documents that you thought were not responsive?

**Mr. Andrew Forgione:** I wasn't looking for responsive records or not; I was looking for issues. I was focused on controversial emails, numbers, that sort of thing.

**Mr. Peter Tabuns:** So you never saw an email and said, "Gee, that's not responsive. I don't know why it's here."

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**Mr. Andrew Forgione:** No. I wouldn't have made that decision, no.

**Mr. Peter Tabuns:** And who was ultimately responsible for document production at the staff level?

**Mr. Andrew Forgione:** In the ministry?

**Mr. Peter Tabuns:** Yes.

**Mr. Andrew Forgione:** I think Jesse was the lead, and the deputy has said that as well before this committee. She was seconded before I arrived at the ministry. So I think it was Jesse for the ministry, and I think it was—I'm not even sure who it was at the OPA, actually.

**Mr. Peter Tabuns:** The ministry is fine. Did you ever discuss the consequences from an issues management perspective of not producing the documents the committee had directed to be produced?

**Mr. Andrew Forgione:** No. I wasn't part of those discussions with the minister or the high-up staff; just the communications side of things.

**Mr. Peter Tabuns:** And on the communications side, did you have discussions about the consequences of not producing the documents that had been ordered produced?

**Mr. Andrew Forgiione:** We discussed the balance that the minister had to the ratepayers and to the committee, and we knew he had written to committee as well. So, no, we didn't talk about the specific consequences. I think that was more of a government House leader discussion, as you've seen with previous members of this committee who have come before it and the testimony that they've had. I wasn't at the table to discuss the consequences in particular.

**Mr. Peter Tabuns:** But you did talk about that messaging balance between—

**Mr. Andrew Forgiione:** Yes, that I did. That was our decision, or the minister's decision. Based on the legal advice that he was receiving, he wanted to make sure that it was safe for the records to be released and that it didn't prejudice any of the discussions with TransCanada or Greenfield South. But it wasn't my decision to make; it was the minister's.

**Mr. Peter Tabuns:** When we talk about the production of documents, was it the Ministry of Energy that came in and oversaw the search of documents in the minister's office?

**Mr. Andrew Forgiione:** I'm not 100% sure. My records were never searched, because I didn't have anything responsive to the motion, so I'm not 100% sure. But I would assume the minister's office oversaw their own records and the deputy minister's office oversaw his own records, and then there were divisions. The same with the OPA: They oversaw their own searches.

**Mr. Peter Tabuns:** Mr. Delaney asked you a question about the position of the different parties on the cancellation of the plants. Was it ever pointed out to you that it was Liberal Minister Dwight Duncan who authorized the Mississauga plant to go forward in the first place?

**Mr. Andrew Forgiione:** The Mississauga plant? Yes, I understood that it was a ministry RFP for that plant, and subsequently, I think, it was turned over to the OPA when it was renegotiated.

**Mr. Peter Tabuns:** And that George Smitherman gave the direction to the OPA to put the plant in Oakville? You were aware of that?

**Mr. Andrew Forgiione:** I think he just said "south-west GTA," and then the way that the RFP process worked, it came with a location. Now I understand that Minister Chiarelli is working on changing the process to make it better for Ontario, but at the time, when an RFP went out and came back with a location, the minister didn't say, "Put one on that corner; put one on that corner." It was more that the bid came in and the lowest bid won. If the location was Loreland Avenue or the Ford plant, that was the location.

**Mr. Peter Tabuns:** So, in fact, public consultation would have been irrelevant to the location.

**Mr. Andrew Forgiione:** No. It was still required through the environmental review process.

**Mr. Peter Tabuns:** It may have been required, but it was irrelevant, because the lowest price had already been secured, and thus the project had already been secured.

**Mr. Andrew Forgiione:** And Minister Chiarelli is working on improving that process.

**Mr. Peter Tabuns:** No, I understand that. I understand that message.

Did you work on the message track that we're getting, trying to say that it was the opposition parties that were responsible for all this? Did you actually get involved in that?

**Mr. Andrew Forgiione:** For all of what?

**Mr. Peter Tabuns:** One of the defensive points we've been getting back from the government has been that, "Well, everybody agreed that these plants needed to be cancelled or relocated." Did you work on development of that?

**Mr. Andrew Forgiione:** I worked on some research, on finding out—I didn't follow the 2011 election as closely as I maybe should have, so I did a lot of research, finding out what the positions of all the other parties were. I definitely worked on that messaging, yes.

**Mr. Peter Tabuns:** And did they ever tell you to do the research on what the other parties said when the government first started talking about putting these plants in place?

**Mr. Andrew Forgiione:** No, I wasn't aware of that.

**Mr. Peter Tabuns:** Fair enough. Mr. Bisson, do you have any questions?

How much time do I have left?

**The Chair (Mr. Shafiq Qaadri):** One and a half minutes.

**Mr. Peter Tabuns:** Hardly enough to say "good morning."

Did you have any regrets about the production of those documents last fall?

**Mr. Andrew Forgiione:** I wasn't involved in the actual disclosure, but I know the minister has come before this committee and said that there were mistakes made, and the same with the deputy and the same with Colin Andersen.

**Mr. Peter Tabuns:** What do you think the most fundamental mistake was?

**Mr. Andrew Forgiione:** I think not coming to an agreement with all three parties on a way to discuss them in a confidential way, so that the committee was happy with the records but the public was still protected from the actual process and the negotiations. But I understand the NDP's perspective of always wanting documents public. I know you've said that before in committee. But I think that was the main regret, not having an agreement with all three parties to discuss so that the province could still be protected, and that Minister Bentley said many times.

**Mr. Gilles Bisson:** Well, you piqued my interest again. It's not a question of what you want; it's a question of what we're obliged to do by the rules of this House and by convention. So I just caution—well, I'm not cautioning. I guess I would just say, it's not what you want and it's not what I want; there is a requirement when a committee requests a document that that motion be complied with.



**Mr. Andrew Forgione:** It was complied with.

**Mr. Gilles Bisson:** No, that's not—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bisson.

To Mr. Delaney: 10 minutes. Final round.

**Mr. Bob Delaney:** Thank you very much, Chair.

Andrew, when you first began working in energy, your minister was Minister Bentley. When he appeared before the committee, one of the things that he said is—and I'll use his words exactly—"I want to say clearly and directly that I've always worked as hard as I can, used my best judgment and acted in good faith in the best interests of the people I represent in all of my capacities." In the time that you spent working with Chris Bentley, would you agree with that statement?

**Mr. Andrew Forgione:** Yes. He was a great boss, and I know he worked really hard for his constituents in London and was awesome.

**Mr. Bob Delaney:** Okay. Thank you, Chair. That's all we have this morning.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, and thanks to you, Mr. Forgione, for your testimony. The committee is in recess—

**Mr. John Yakabuski:** Chair—

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Yakabuski?

**Mr. John Yakabuski:** Thank you, Mr. Chair. This afternoon, we have witnesses coming, one a recalled witness, David Livingston.

**The Chair (Mr. Shafiq Qaadri):** Yes.

**Mr. John Yakabuski:** I think you can agree that his testimony is going to be significant, based on some questions and the answers provided to questions in his previous testimony. Is it not possible to have this moved to 151, where the accommodations are larger? We expect there will be a fair number of media interested in covering that as well.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. My understanding is that the Standing Committee on Estimates has precedence of that room—no particular reason.

Mr. Bisson?

**Mr. Gilles Bisson:** Isn't this being streamed? I thought this was being streamed.

**The Chair (Mr. Shafiq Qaadri):** This is being streamed, yes. We wouldn't think of having a justice policy committee without streaming.

**Mr. Gilles Bisson:** I'm just saying because of the motion—

**The Chair (Mr. Shafiq Qaadri):** Mr. Clark.

**Mr. Gilles Bisson:** Just to remind the committee, there was a motion that was passed that it be streamed, and my understanding is, this is being streamed.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Yes, it is.

**The Chair (Mr. Shafiq Qaadri):** We are in mid-stream now.

Mr. Clark.

**Mr. Steve Clark:** Mr. Chairman, while we recess, I wonder if you could speak to the Chair of estimates with a view to switching rooms for this afternoon.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. We will do that.

The committee is in recess till this afternoon.

*The committee recessed at 0958 and resumed at 1501 in room 151.*

MR. DAVID LIVINGSTON

**The Chair (Mr. Shafiq Qaadri):** Colleagues, the Standing Committee on Justice Policy is now called officially to order.

I'd invite our first presenter to please come forward: Mr. David Livingston.

I would also like to thank our able Clerk for the room change, as was requested earlier today. Thank you, Ms. Pomanski.

Mr. Livingston, you know the drill very well. You'll be affirmed?

**The Clerk of the Committee (Ms. Tamara Pomanski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. David Livingston:** I so affirm.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Livingston. Your five-minute opening address begins now.

**Mr. David Livingston:** Thank you, Chair. Good afternoon.

The last time I was here, we talked extensively about gas plants. Today it seems that there are three issues being treated as if they are related, and they are not. I want to comment on each separately.

With respect to email management, when I joined the Premier's office in May 2012, there were briefings on the many issues the office needed to address. Email management policies were not among them. There were no policies or procedures regarding email management, nor was any legislative material offered either by the office or by the Ontario public service.

In managing their emails, all staff continued to follow practices developed over the years before my arrival. In my case, I followed my own long-standing practices. Emails were my to-do list. Once action was taken, the email was deleted so that it was clear what remained outstanding.

We became aware that for departing staff, email accounts remained open and that unread emails were piling up. As chief of staff, I talked to Peter Wallace many times every week on many issues, so I naturally turned to him for advice on how to deal with the situation. The answer seemed to be one of better execution of existing policy: Close the account on a timely basis on the departure of the staffer, which is what we did.

With respect to electronic file management, as chief of staff in the Premier's office, there was no need for me to create electronic records. So in January 2013, as the outgoing chief, I had no active government files and no records that were not duplicates or transitory in nature. However, I did have some personal files, and as you can imagine, I had some privacy concerns about them. Again, it was perfectly natural for me to turn to Peter Wallace for advice, and the resulting actions were entirely consistent with his advice.

As with emails, all staff continued to follow their own long-standing practices for managing their own files.

With respect to the gas plants: As I have said to this committee before, I spent nine months in the Premier's office, from May 2012 to February 2013. I became the Premier's chief of staff long after decisions regarding cancelling the gas plant contracts had been made.

During my tenure, the job of government was to settle disputes with the companies involved. The Ministry of Energy was responsible for the negotiations and kept the Premier's office informed. Files regarding gas plants did not originate from the Premier's office, and everything relevant to the settlements came from the ministry. Any interaction between the Premier's office and the ministry would have been provided under previous information requests. Email and electronic management practices had nothing to do with the gas plant file.

Going forward, I have co-operated with all requests to appear before this committee and the Office of the Information and Privacy Commissioner and have answered all questions asked. I will continue to co-operate, and I believe that any direction or recommendations from the committee will be helpful to future staff.

I'd be happy to take your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Livingston.

To the NDP: Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Thank you, Mr. Livingston.

The initial batch of documents was released by the Ministry of Energy and OPA around September 2012; that's your recollection?

**Mr. David Livingston:** Sorry, I really don't have a recollection. I—sure.

**Mr. Peter Tabuns:** You became chief of staff, again, you just said in May of—

**Mr. David Livingston:** May 2012.

**Mr. Peter Tabuns:** Did you, in your time as chief of staff, have discussions with the Premier about the release of those documents?

**Mr. David Livingston:** Not that I recall.

**Mr. Peter Tabuns:** Actually, have you circulated, Clerk, the—

*Interjection.*

**Mr. Peter Tabuns:** Oh, you're getting photocopies. Quel dommage.

In August 2012, you had a check-in with Colin Andersen, and you wanted to check in with your approach on a couple of files. I don't know if you have any recollection

of your discussions with Mr. Andersen in August, prior to the release of the documents requested by this committee. I imagine that you had discussions with him about the release of these documents; did you not?

**Mr. David Livingston:** I honestly do not recall the conversation. I don't know what we would have talked about.

**Mr. Peter Tabuns:** So you never had any discussion with—if you could go to documents 4 and 5.

**Mr. David Livingston:** I'm sorry. I really don't recall what we talked about.

**Mr. Peter Tabuns:** So did you or did you not have discussions with the head of the Ontario Power Authority about document release in August 2012?

**Mr. David Livingston:** I accept that I did because it's here in the emails, but I would have talked to lots of people all the time. I really don't recall what I discussed with Mr. Andersen.

**Mr. Peter Tabuns:** Mr. Bisson, you had something?

**Mr. Gilles Bisson:** I have questions, but when you're done.

**Mr. Peter Tabuns:** That's fine, okay.

So did you have ongoing discussions with the Premier about the documents and about the situation that you were facing in the House?

**Mr. David Livingston:** I briefed the Premier regularly on things. There may have been discussions about what the status was of the negotiations, but I don't recall a specific briefing. I don't recall discussing the documents, the release of documents. That was not a topic of conversation, in my memory.

**Mr. Peter Tabuns:** None. So you have no recollection of the Premier ever being involved in a discussion about which documents would be produced and the potential impact on his government?

**Mr. David Livingston:** No.

**Mr. Peter Tabuns:** And yet, at the same time, some of your staff—Laura Miller, who was your deputy, emailing with Don Guy all about this whole document production issue, but it never reached you?

**Mr. David Livingston:** I would have been aware that there was a request for documents. I was aware of what the strategy was. I felt that it was being handled. There would be no reason to have a conversation beyond that.

**Mr. Gilles Bisson:** Can I?

**Mr. Peter Tabuns:** Yes, go ahead.

**Mr. Gilles Bisson:** Just on that point, we've had your counterpart, Mr. Morley, before this committee, who swore under oath that in fact the Premier was briefed, knew everything that was going on, and it was a way that Mr. McGuinty worked, to make sure that in doing his work he was aware of what was going on in his office. One chief of staff tells us in fact that that information was given to the Premier. So are you contradicting that?

**Mr. David Livingston:** No. Mr. Morley was the chief of staff for some time before May 2012 and may well have briefed the Premier on what was going on before I came into the office, but after I came into the office, it was not a topic—



**Mr. Gilles Bisson:** Was the Premier in the knowledge of what was going on at the estimates committee?

**Mr. David Livingston:** I don't know.

**Mr. Gilles Bisson:** Okay, carry on. That's interesting.

**Mr. Peter Tabuns:** And you didn't follow what was going on at the estimates committee?

**Mr. David Livingston:** No.

**Mr. Peter Tabuns:** So we were debating motions about privilege and contempt that could shake your government. Apparently the Liberal Party rehired Don Guy for the fall of 2012 on fear that there would be an election, and this didn't trouble the waters in the Premier's office at any point?

**Mr. David Livingston:** In the Premier's office, we were looking at what was happening with respect to the negotiations. Were negotiations going on with the companies? As I said in my opening statement, our concern is to make sure that these things were getting resolved, so as long as the conversations were continuing, then we felt that the job was being done.

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**Mr. Peter Tabuns:** But everything that was going on in the House, in estimates—the stability of the government—was not a matter of concern?

**Mr. David Livingston:** I don't know what the answer to that is.

**Mr. Peter Tabuns:** Well, no, if you never had a discussion—if you're maintaining to us that you never discussed this with him—

**Mr. David Livingston:** Right. I did not feel at the time that what was going on was something that represented—something that was going to cause the fall of the government, if you like. These were concerns that were being expressed. I felt the concerns were being addressed and everything was moving along the way that it should.

**Mr. Peter Tabuns:** When did you change your mind to the point that Don Guy got brought into the picture?

**Mr. David Livingston:** I didn't bring Don Guy into the picture. I don't know when Don Guy came into the picture. We would have had conversations with Don about various things at various times. I don't know the answer to that.

**Mr. Gilles Bisson:** Did you ever discuss this issue with Don Guy?

**Mr. David Livingston:** No.

**Mr. Peter Tabuns:** Were you yourself regularly in touch with Don Guy?

**Mr. David Livingston:** I've known Don for years, so I would talk to Don about different things at different times. "Regularly" would be a word I would use quite literally. I would talk to him often.

**Mr. Peter Tabuns:** Did the speed or the frequency of your discussions increase when he was brought on to prepare for an election in the fall of 2012?

**Mr. David Livingston:** I don't remember him being brought in for an election in the fall of 2012. The speed of my conversations with him during the summer would not have increased, no.

**Mr. Peter Tabuns:** What was your opinion when you had to deal politically with the decision of the Speaker around a prima facie finding of privilege, of contempt?

**Mr. David Livingston:** As we have said before, as was discussed last time I was here, I don't think I was hired by the Premier for my political advice, so my political view on it would not have mattered. I had a view that the contempt motion after the documents' release was unfair, so that would be as much as I could say about it.

**Mr. Peter Tabuns:** Did you discuss the implications with the Premier and with Minister Bentley?

**Mr. David Livingston:** I didn't need to discuss the implications. I think those were well known to Minister Bentley. They would have been well known to the Premier because of what was going on in the House. It was not a topic of conversation between me and him or me and them.

**Mr. Peter Tabuns:** Did you discuss it with Laura Miller, who was your deputy?

**Mr. David Livingston:** Again, it was something that was very well known, so there was going to be no need to talk about it specifically.

**Mr. Gilles Bisson:** Can I—

**Mr. Peter Tabuns:** Go ahead. Why don't you try?

**Mr. Gilles Bisson:** I think we're having a bit of a problem here. You were the chief of staff. There was a request by a committee to release documents. Were you aware that a motion by committee had to be complied with, that you had no wiggle room, that you had to give the documents? Were you aware?

**Mr. David Livingston:** We're going back to the summertime?

**Mr. Gilles Bisson:** Yes, going back to the original motion from the estimates committee, were you aware that—first of all, were you aware that such a motion was made?

**Mr. David Livingston:** I was aware that the motion was made.

**Mr. Gilles Bisson:** Were you also under the understanding that you had to comply with that motion?

**Mr. David Livingston:** That part would have been unclear to me, because it seemed, as a matter of commercial sense, commercial prudence, that documents related to negotiations that were under way should not be released.

**Mr. Gilles Bisson:** Did you see this as a political problem?

**Mr. David Livingston:** Again, politics would not be something that I was brought in to discuss—

**Mr. Gilles Bisson:** Did you see it as any kind of a problem for the Premier and the government in regard to the refusal to release those documents?

**Mr. David Livingston:** I felt that because it made commercial sense not to release them, everybody would have come to that point of view.

**Mr. Gilles Bisson:** Well, obviously, you were wrong. The Speaker made a ruling that was pretty clear. You

have to provide those documents, and you can't use that as an argument not to give them.

You're here telling us that you never had any conversation, at the time you worked in the Premier's office, with the Premier about this particular issue.

**Mr. David Livingston:** Yes.

**Mr. Gilles Bisson:** That's, "Yes, I've never had the conversation."

**Mr. David Livingston:** Yes.

**Mr. Gilles Bisson:** Were you aware of any conversations going on in the Premier's office in regard to this particular issue: the release, the May 16 estimates?

**Mr. David Livingston:** Again, we kept a running list of all the files we had in the Premier's office, and the status of gas plant negotiations would have been on that list.

**Mr. Gilles Bisson:** I'm not talking about the status of the negotiations.

**Mr. David Livingston:** Right.

**Mr. Gilles Bisson:** I'm talking about the release of the documents. Were you aware of any conversations that took place in the Premier's office, among staff or anybody else, in regard to the non-release of the documents requested by the estimates committee?

**Mr. David Livingston:** Again, we would have been discussing it in the context of, did it make commercial sense to release them. We were concerned, as was Minister Bentley, that in releasing them, we would have prejudiced the negotiations, and so that was the reason they were not released. The implications of that were not something that was discussed extensively.

**Mr. Peter Tabuns:** But you had legal staff who were exploring all this, writing opinions, looking at whether or not documents legally could be withheld. You were getting opinions that in fact you had to bring them forward, that you didn't have any maneuvering room on this. You weren't paying any attention to any of those?

**Mr. David Livingston:** I would say that my view was that because it made sense not to, that everybody would have come to that point of view.

**Mr. Peter Tabuns:** And thus you would ignore the power of the Legislature?

**Mr. David Livingston:** I didn't feel like I was ignoring the power of anybody. I felt that the question around the release of documents was always when were they going to be released, not if they were going to be released, and I believe what the minister had said is that when we had deals, then the documents would come out, and I felt that that was going to be enough.

**Mr. Peter Tabuns:** Were you in touch with the government House leader's office or the Minister of Energy about this? Were you essentially giving them that line of argument?

**Mr. David Livingston:** I would say that it wasn't an argument that I was making. It would have been the understanding between the House leader and the Minister of Energy.

**Mr. Peter Tabuns:** So, in effect, your whole state of mind was, "We don't have to comply with the decision of

the Legislature or of its committees, and these House rules are irrelevant?"

**Mr. David Livingston:** No. My state of mind was that it made commercial sense not to, that everybody would understand that that was the appropriate thing to do, and if that occurred, then there would be no dispute.

**Mr. Peter Tabuns:** Mr. Livingston, we elected a government here. It's democratic, it has rules, it has committees, and they have powers. Effectively, you're saying that notwithstanding democratic rule and the powers of committee and centuries of tradition, you could ignore it, and that was the state of mind in your office, in the Premier's office and amongst the senior staff that you dealt with in the ministry and House leader's office?

**Mr. Gilles Bisson:** Or you're not telling us the whole story.

**Mr. David Livingston:** I would say it was not that we were ignoring it. The view was that the documents would be released when the deals were reached, and that's in fact what happened. The question was when it was going to be complied with, not if.

**Mr. Gilles Bisson:** Let me go back to the question that I asked you earlier. Were you aware of any conversations within the Premier's office in regard to the refusal of releasing documents requested by the estimates committee?

**Mr. David Livingston:** And I would just say again that my recollection of that entire period was that there was a good and valid reason why the documents were not being released immediately.

**Mr. Gilles Bisson:** Were you party to any of those discussions?

**Mr. David Livingston:** There would have been discussions around it, and the—

**Mr. Gilles Bisson:** With whom did you have those discussions?

**Mr. David Livingston:** I don't recall specifically with who. I'm just trying to think back to what would have likely happened, and during that time, there was an understanding that the documents would be released when the deals were reached, and I don't think it would have gone beyond that. So that would be my recollection of what would have been discussed.

**Mr. Gilles Bisson:** Because you just said in your testimony that you never briefed the Premier about this particular issue.

**Mr. David Livingston:** Right.

**Mr. Gilles Bisson:** We're having a bit of a hard time squaring that off, because the testimony of others says that in fact the Premier, in a style of work which I think was commendable, made sure he knew what the heck was going on. So either you're not telling us the whole story here or—I don't want to say what the other one is.

**Mr. David Livingston:** So I will just say again that during the summer, there were many, many files that were being addressed. This was one of them—

**Mr. Gilles Bisson:** Was this one of them?

**Mr. David Livingston:** Absolutely.



**Mr. Gilles Bisson:** And did you discuss this with other staff—

**Mr. David Livingston:** There were many files that were under way and—

**Mr. Gilles Bisson:** Did you discuss with other staff in the Premier's office the issue of not releasing the documents at the estimates committee?

**Mr. David Livingston:** So, in direct answer to that, I would say the answer is no. What we discussed was exactly what I said, and that is that there was a reason why the release was delayed until a deal had been reached, and that once the deal had been reached, then the documents would be released. That was the understanding.

**Mr. Gilles Bisson:** Did you have any discussion with anybody in the House leader's office or the whip's office, or the House leader or the whip, in regard to this particular issue of the non-release of documents that were requested by the estimates committee?

**Mr. David Livingston:** I certainly don't recall anything with the whip's office. David Phillips from the House leader's office was a regular part of discussions that we were having inside the Premier's office, and so there could well have been discussions with David, but I don't recall them in the kind of specificity that you're talking about.

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**Mr. Gilles Bisson:** Did you ever talk to David Phillips around the issue of the strategy of not releasing documents?

**Mr. David Livingston:** I think David had views on it. I recall that those views were expressed—

**Mr. Gilles Bisson:** And you were not concerned? You just said, "Okay, do what you've got to do"? I'm just trying to figure this out here.

**Mr. David Livingston:** Again, it's not that it was being ignored. It's not that there was anything that was trying to be brushed aside. It's not that there was anything that was being not taken into account. I feel like I'm just repeating myself, and I apologize: There was an understanding that documents were going to be released, that there was commercial sensitivity attached to them and that, if we had released them immediately, that could have prejudiced discussions.

**Mr. Gilles Bisson:** So, at no time, nobody in the House leader's office came to you and said, "Here's how we're going to deal with not releasing the documents"? Nobody from Bentley's office came to you or your staff and said, "Here's how we're going to deal with not releasing the documents"?

**Mr. David Livingston:** It could well have happened. I don't recall it happening.

**Mr. Peter Tabuns:** And so, if you never came to an agreement, then you never would have released the documents?

**Mr. David Livingston:** I think that as we got closer to the contempt motion, Minister Bentley's view on that was changing.

**Mr. Peter Tabuns:** And what did it change to?

**Mr. David Livingston:** Again, this would be speculation, because we did get to a deal and the documents did get released. What would have happened if we hadn't gotten to a deal, I don't know.

**Mr. Peter Tabuns:** Well, based on everything you've indicated so far, you would have ignored the will of the Legislature and of this committee. You would have ignored the rules of the House. You would have been in contempt.

**Mr. David Livingston:** Again, the view that was taken is that the documents would be released when the deals were reached, and we had confidence the deals were going to be reached and the documents would come out, as they did.

**Mr. Gilles Bisson:** I just have to say, your credibility on this—I'm trying to find a way to square it all off, but it doesn't fly. On the one hand, in the answer to the question you just gave Mr. Tabuns, Mr. Bentley was changing his view on it, which means to say that he obviously had another view prior to that, which was not to release the documents. I can't believe that the Premier's office, and you as the chief of staff, didn't have discussions with Bentley or his office, or Mr. Milloy or his office, in regard to the strategy around not releasing documents.

So, I ask the question again: Did you talk to anybody about not releasing those documents?

**Mr. David Livingston:** The strategy was that the documents would be released when we had deals.

**Mr. Peter Tabuns:** And who did you talk to about that? It wasn't osmosis. It wasn't telepathy. You actually had to talk to people.

**Mr. David Livingston:** The reason that I'm being vague was that it was a general understanding, by everybody that was involved with the file, that the documents were going to be released when the deals were reached. And so—

**Mr. Peter Tabuns:** Including the Premier? How did you understand the Premier's mind?

**Mr. David Livingston:** When I'm referring to "the office," I'm referring to the people that work for me, so people inside the Premier's office. The Premier, I think, would have just expected and assumed that we were dealing with it in the way that we had said, and that is that we were going to be releasing the documents when the deals were reached.

**Mr. Peter Tabuns:** And that was your best guess of his state of mind?

**Mr. David Livingston:** Yes.

**Mr. Peter Tabuns:** You never asked him, and he never said?

**Mr. David Livingston:** I don't recall having that conversation, no.

**Mr. Gilles Bisson:** There's an email here from Dave Phillips, that was sent to you, that talks about the strategy around this whole issue. So you never read your emails?

**Mr. David Livingston:** Sorry, where is that?

**Mr. Gilles Bisson:** You have an email, in package number 1, I take it, that you've got. September 19.



**Mr. David Livingston:** Right.

**Mr. Gilles Bisson:** Yes. I just want it for the record: These are documents that have been released to the general committee. They're open documents. I just want to confirm with the Clerk—right? That's a “yes”? Thank you.

Clearly, as of September 19, you were dealing with issues of strategy with Mr. Phillips in regard to how you were going to deal with this whole thing. So you never had a discussion with him until September 19? Is that what I am to believe?

**Mr. David Livingston:** I think that David would have been part of the same discussions around just generally updating all the files, and he would have been working under the same understanding that I was; that is, that the documents would be released once the deals were reached on the gas plants. I notice that this memo is dated September 19—after the documents had been released, after the gas plant deals had been done, and the contempt motion had already been filed—so I would have said that this was more about how to deal with the contempt motion than it was about how to deal with the release of documents.

**Mr. Peter Tabuns:** But certainly you had ongoing discussions—with people you can't remember—about how all of this was going to be handled, and you were not going to comply until you felt that you wanted to comply.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Tabuns and M. Bisson. To Mr. Delaney: 20 minutes.

**Mr. Bob Delaney:** Thank you, Chair. Mr. Livingston, thank you very much for being here again today. I just want to actually pick up some of the discussion that you left off on and clarify some past committee discussion about documents and records.

In response to an estimates committee request for records on the two gas plant relocations last year—2012—56,000 documents, in fact, were turned over by the OPA and the Ministry of Energy, right?

**Mr. David Livingston:** Okay.

**Mr. Bob Delaney:** Okay. Since the justice committee began its hearings in March, the government has provided more than 135,000 documents, including some 30,000 documents from the Premier's office, and in April, some 4,000 documents were released in response to a freedom-of-information request related to the Oakville and Mississauga gas plants. These document disclosures include records from both the current and former Premier's office. They include thousands of pages of emails and handwritten notes, as well as communications and transition materials.

Do you want to address the statements that we've heard in this committee, primarily from the opposition, that they do not have records from the former Premier's office?

**Mr. David Livingston:** It seems to me that there was a lot of information around, that everything that didn't affect the commercial sensitivity of the negotiations was released; that there was always a clear understanding that once the commercial sensitivity went away, everything

was going to be released. So it was never a question of “if,” it was always a question of “when,” and that the volume of information that was out there was as complete as anybody could make it.

**Mr. Bob Delaney:** So to restate that, then, there was never a strategy about how not to release documents. However, there was a consensus as to how to balance the need to release the documents with the need to protect commercially sensitive information and the public interest. Would that be correct?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** Okay. I'd like to ask you a few questions about the Information and Privacy Commissioner's special report. Here again, I think it's important that we set the record straight. In the report, the Information and Privacy Commissioner provides comment from the chief information officer in terms of conversations that you apparently had regarding records management.

**Mr. David Livingston:** Sorry, regarding?

**Mr. Bob Delaney:** Around records management.

**Mr. David Livingston:** That's right.

**Mr. Bob Delaney:** According to the report, the chief information officer told the Information and Privacy Commissioner that—and I'll use his words exactly—“at no time did he ... believe that the inquiries from [Mr.] Livingston regarding the most effective way to ‘wipe clean’ the computers on transition were being made for an improper purpose.” And in response, the Information and Privacy Commissioner reports that your discussions with the chief information officer and the secretary in January were motivated by a concern that email accounts for departing staff must be decommissioned to avoid the possibility that old accounts would continue to accumulate emails after that staff member had departed, and that it was not motivated by an attempt to inappropriately delete electronic records or other relevant material.

Would you like to add anything to that?

**Mr. David Livingston:** Maybe correct it. I'd like to start by saying that there was never an intent by anybody to inappropriately delete emails or records. I think there were two separate conversations. The issue with respect to emails piling up for departed staff happened earlier. I think it happened in—I don't remember exactly, but in August or September. In January, it was much more about—as I said, I had records that were personal in nature, and with those I was trying to figure out, “What do I do with them? How do I make sure that those were deleted?”

So they were two separate conversations motivated by the same things. In one case, we had emails piling up for people who had left, and what do we do about those; and in the second case, it was the personal records that I had that I wanted to have deleted. In both cases, I think the advice was taken, and we reacted to it in the appropriate way.

**Mr. Bob Delaney:** Another issue that came up in the report is whether or not it is standard protocol for staff email accounts to be deleted after they leave government. In fact, Secretary Wallace confirmed to the committee



that it's a common practice, government-wide, on both the political and public service side. To use his words, he said, "The wrapping up of email accounts would be a perfectly routine business. It's done in all businesses. There's no expectation in the archives act or anyplace ... that records be kept forever in digital form, backed up in that approach. So it is routine that as individuals leave the Office of the Premier or any place ... within the government of Ontario, but in this case the Office of the Premier, their accounts would be wound down...."

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Again, just to confirm: Allegations that email accounts were deleted inappropriately are false. Is that correct?

**Mr. David Livingston:** Absolutely correct.

**Mr. Bob Delaney:** Thank you. To move now to the transition period, there have been a lot of misconceptions about what happened at that time in terms of record and media retention, so let's explore that a little bit and again set the record straight.

William Bromm from the Cabinet Office has confirmed to this committee that the email accounts of some 50 of the former Premier's office staff were preserved during transition in light of an ongoing freedom-of-information appeal, not because of any extreme measures. Furthermore, the recovery of electronic devices like BlackBerrys and laptops was all part of standard property recovery process when an employee leaves the Ontario public service.

It's also important to note that in her report, the Information and Privacy Commissioner confirms, based on interviews with you, with the secretary of cabinet, with members of the former and current Premiers' office and with the chief information officer, "None of these individuals had any specific knowledge or information about the inappropriate deletion of records occurring as part of that transition." Would you like to add anything else on that transition period?

**Mr. David Livingston:** The only thing I would add is that we had put together a set of binders—I think I mentioned this the last time I was here—that covered off everything, from what all the files outstanding were and what the organization chart was. We created records for the new government that were also part of that transition.

It is absolutely correct that emails or records were not being inappropriately deleted or that they were not being dealt with in the way that they had always been dealt with. Absent any policies or information otherwise, people dealt with them in the way they always had. We did make every effort to make sure that there were good documents and records for the new government when they came in.

**Mr. Bob Delaney:** Do you recall whether you received any advice or guidance on archive and record-keeping practices or requirements when you became the chief of staff to Premier McGuinty?

**Mr. David Livingston:** I specifically recall not getting that guidance.

**Mr. Bob Delaney:** Based on Premier McGuinty's June 7 statement in response to the Information and

Privacy Commissioner's special report, it does appear that his staff, in general, were not adequately trained in this regard. The former Premier said that, "despite some efforts," the government "did not devote adequate resources and attention to ensuring that all government staff in all ministries and in the Premier's office were fully informed of their responsibilities."

He went on to say, "This inadequate training has made it difficult for staff government-wide to both understand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated."

In the IPC's report, the Information and Privacy Commissioner outlines that you didn't recall providing staff with copies of the Premier's office records retention schedule, nor did you supervise or instruct staff regarding records retention processes. Is that accurate?

**Mr. David Livingston:** Correct; nor did I know that such a thing existed.

**Mr. Bob Delaney:** Okay. Anything else you wanted to add to that?

**Mr. David Livingston:** Only that if policies had been available, there would be every intention of abiding by them. Absent knowing what to do otherwise, people were dealing with them in the way they always had.

**Mr. Bob Delaney:** Okay. Mr. McGuinty also testified that the rules, as laid out in the Archives and Record-keeping Act, are "confusing" and "cry out for clarity." He told the committee that "what to destroy and what to preserve is ... a matter of judgment." In fact, one of the responses to the Information and Privacy Commissioner's recommendations is that our government has initiated a review of the archiving schedules so that they can be better clarified. Would you like to comment on the rules and why they're as confusing as they are currently written?

**Mr. David Livingston:** It seems, with the benefit of hindsight on it, that there are reasons why you can delete and reasons why you should retain. They are, at best, unclear. The purpose of regulation and the purpose of policies would be to give that clarification so people knew exactly what to do. Absent that clarification, then, they're really dealing with it the way that they think best.

**Mr. Bob Delaney:** Mr. McGuinty told us that he urges the government to immediately devote all necessary resources to train all government staff regarding record management obligations, so at this time, many important steps are already being taken to ensure that all staff are aware of and all staff follow the rules under the Archives and Recordkeeping Act and under the Freedom of Information and Privacy Act. All of these steps were initiated prior to the release of the Information and Privacy Commissioner's report, including mandatory all-staff training held in April and improvement in the orientation process for new political staff to ensure that they're aware of their responsibilities as soon as they're hired. In fact, our government has responded to the majority of the Information and Privacy Commissioner's



recommendations and continues to study her suggested amendments to freedom-of-information legislation.

My question to you is, would you have any other suggestions on how we can ensure that staff are adequately trained?

**Mr. David Livingston:** I am sure the government is doing an excellent job.

**Mr. Bob Delaney:** Mr. McGuinty's statement concludes by urging the government to draft clear guidelines describing in detail what kinds of records are deemed public and therefore must be preserved and which are transitory records or personal, political and constituency records and therefore need not be preserved. He goes on to state, "In the absence of such clarity, it will be very difficult for government staff to exercise sound judgment."

Throughout our work, the committee has been provided with and reviewed several different record retention schedules which outline several rules around, and definitions of, transitory records. What is clear is that not all records need to be kept, and the Information and Privacy Commissioner herself has confirmed that. The common record series defines transitory records as "records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record."

When we asked Secretary Wallace about his personal experience with transitory records, he told us, "from the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant."

So the question is, based on your experience in government, does that seem to be an accurate characterization of transitory records?

**Mr. David Livingston:** Yes.

**Mr. Bob Delaney:** Anything else you want to add to that?

**Mr. David Livingston:** This has obviously been well thought out by people who are very close to it. They understand it at least as well as I do, and probably better. I can't imagine how I could make it better than what they've already thought of.

**Mr. Bob Delaney:** Fine. We're trying very hard to clarify these points around transitory records, what we've found is that there's a widespread misconception, perhaps even a deliberate misconception, that every piece of paper and every electronic record needs to be kept, and I think one thing we can conclude now is that that is not true; correct?

**Mr. David Livingston:** Yes, absolutely true.

**Mr. Bob Delaney:** Another category of transitory records are, of course, duplicates, which the Information

and Privacy Commissioner defines as "copies of records kept by other offices or branches within the ministry"—or within the government. That report states, "If staff in either the ministers' offices or the Premier's office determined that another government branch or department was retaining the records, there would be no requirement under these records retention policies for the minister's office or the Premier's office to retain"—and here's the operative word—"additional copies," and she emphasizes that the program owner would be responsible for maintaining business records related to their specific initiatives.

I know from my experience as a parliamentary assistant that it's customary that the ministry would provide, for example, briefing decks and policy options for the vast majority of meetings that I would attend, and that, similarly, a cabinet minister or their staff would know that Cabinet Office would retain all documents prepared for and presented at cabinet meetings. Hence, you don't have to.

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So in those instances, I would imagine it would be up to the program owner, and, for the purposes of these two examples, the ministry and the Cabinet Office, to retain these documents, and the documents that someone else would have in their possession then would be surplus duplicates. Can you comment on that?

**Mr. David Livingston:** That sounds absolutely right, and I would say it also applies within an office. So if somebody within an office sends a document to somebody else within the office, then presumably the same rules would apply: The person who originated the document would be the program owner, in that definition, and would be the responsible one for keeping it.

**Mr. Bob Delaney:** Not wishing to belabour the obvious, but there is no need or requirement now or in times past for someone to retain what are clearly surplus or duplicate documents if you know that the program owner is responsible for retaining the original. Correct?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** In her report, the Information and Privacy Commissioner also touches on what she refers to as a "verbal culture" in political offices, which she says caused her great concern. Some have interpreted this to mean that there's something wrong with discussions or the verbal exchange of ideas between or among elected officials or between or among their staff. Can you expand a little bit on that for the committee? Based on your experience, do you feel verbal communication with staff is an important part of the way that you operate?

**Mr. David Livingston:** I would say absolutely, and I would actually, in my own experience, go further and say that we have become too quick BlackBerry oriented in terms of communicating, and that nothing beats actually sitting down face to face with somebody and talking about an issue and trying to come to a consensus on the issue. So I would have encouraged more face-to-face communication or more communication one on group.

**Mr. Bob Delaney:** Okay. Chair, how am I doing on time?



**The Chair (Mr. Shafiq Qaadri):** Three minutes.

**Mr. Bob Delaney:** Three minutes? Okay.

All right. I'm going to see if we can do one more quick question in the balance of our time, and I'd like to use the balance of our time today to talk about the issue of the relocation of the two gas plants from the communities that didn't want them and were not willing hosts. As everyone in this room knows, it was certainly the right decision to relocate the plants. Just to recap, all three parties supported the October 2010 decision to relocate Oakville and all three parties committed during the 2011 campaign that they would cancel the Mississauga plant. But it was, in fact, our government that was elected, so it was our government's responsibility to implement these commitments.

Now, some of the other parties have said the plants should have been cancelled outright, but we've heard from many witnesses that that approach would have been much more costly and that clearly the best path forward, in the testimony of the witnesses who have appeared here, was to renegotiate alternative sites with the proponents. Numerous witnesses have said that it was far more prudent than ripping up the original contracts and paying premium prices and damages without any power being produced.

In the remaining time, in your view, why was it important to approach the negotiations in this way, and what do you think the costs might have been if the province had simply ripped up the agreements rather than renegotiating them?

**Mr. David Livingston:** The companies involved would have been claiming lost profits, would have been claiming that they were owed returns under their contracts, and either through arbitration or judicially, depending on the circumstance, if that had been found to be true, then the province would have been in a position of having to write big cheques to two companies and getting nothing in return.

The alternative was—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. David Livingston:** —to be investing in plants, creating jobs, creating power, getting value for money. It seemed obvious that that was a better approach.

**Mr. Bob Delaney:** Okay. In the remaining time, anything that you'd like to add to that from your perspective?

*Interjection.*

**Mr. David Livingston:** Excuse me?

**Mr. Bob Delaney:** In the remaining time, is there anything else you'd like to add from your personal perspective during that time?

**Mr. David Livingston:** I felt that everybody who was involved with the file was doing their very best to get the best deal possible for the taxpayer, that there was nobody who was withholding information, there was nobody who was trying to do anything but get the right deal, and we tried to create a circumstance where the right people were together to reach that outcome. I felt that the negotiators and the people who were involved did a good job.

**Mr. Bob Delaney:** Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the PC side, Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much. Thank you, Mr. Livingston, for being here today.

On document 1, I want to talk about the October 10, 2012, freedom-of-information request. Can you tell me, were you in the employ of the Premier's office on or about October 10, 2012?

**Mr. David Livingston:** Sorry. I was the Premier's chief of staff in October 2012, yes.

**Mr. Victor Fedeli:** So you were still in government?

**Mr. David Livingston:** Yes.

**Mr. Victor Fedeli:** You hadn't left yet?

**Mr. David Livingston:** No.

**Mr. Victor Fedeli:** The freedom-of-information request was for "access to the following information from the Office of the Premier"—and there is a series of names, yours is included—"emails, memoranda, Outlook calendar invitations making reference to 'Project Vapour' or 'Project Vapor' during the calendar years of 2010, 2011 and 2012."

And your response to the freedom of information was, "I have nothing responsive." Is that accurate?

**Mr. David Livingston:** Yes.

**Mr. Victor Fedeli:** So you're telling us that while you were still in government, still in the Premier's office, you had no Project Vapour files?

**Mr. David Livingston:** Correct.

**Mr. Victor Fedeli:** How is it that I have so many Project Vapour files from you, but you didn't turn any over to the freedom of information?

Go to page 2 of Liberal gas plant scandal document 1. This is "Update on Vapour mtg with OPA today." First of all, I just want you to take a quick look at it. This is something that you're—this was sent to you; you have received this email. It mentions Vapour all the way through it. Is this a transitory email?

**Mr. David Livingston:** So this is the one from November 2011?

**Mr. Victor Fedeli:** November 24, 2011. It falls into that 2010, 2011, 2012 category.

Would it appear to be a transitory document? It's quite a lot of paragraphs. It's got percentages: 5.25%, 7% to 8%—20 years, OPA model. Would you consider this to be a transitory email?

**Mr. David Livingston:** From my point of view, this would have been an information email about things that were already in other documents and would have been in other places. So from my point of view, yes, this would have been a transitory email.

**Mr. Victor Fedeli:** So you didn't turn this document over because it didn't comply?

**Mr. David Livingston:** As I've said, my practice with respect to—

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, point of order, I presume.

**Mr. Bob Delaney:** Chair, I do have a point of order. The document that Mr. Fedeli is asking about is an October 2012 request for a freedom of information from the Office of the Premier. And the document that he's referring to is from an Andrew Lin at Infrastructure Ontario.

**The Chair (Mr. Shafiq Qaadri):** While true, it's not a point of order, Mr. Delaney. Thank you—

**Mr. Bob Delaney:** Actually, Chair, it is. He's asking the witness about a document that was outside the scope of the request for documents. It is a point of order.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney—

**Mr. Victor Fedeli:** Oh, don't worry; I've got a lot of other examples. We'll get around to more of them—

**Mr. Bob Delaney:** Well, all I'm asking you to do is to make sure you stay within the scope of the request.

**Mr. Victor Fedeli:** Look, I'm not going to waste my time with him.

So go to page 3 of 5 then. Now we're talking about—again, this is “Vapour Deal Summary.” This is from somebody to you—“last point, with the province as the signatory to the arbitration agreement the default would be for the province (i.e. taxpayer) to cover the settlement.” Is this a transitory email, in your opinion, or this crucial information about the taxpayer covering that settlement, is that not information that is of value?

**Mr. David Livingston:** The Vapour documents themselves, the arbitration agreement, all of that—I think they were released. I think they're in the public domain. This is not a—

**Mr. Victor Fedeli:** So when I see here, David Livingston, Office of the Premier, “I have nothing responsive,” you said you had no files because you just figured somebody else gave them all?

**Mr. David Livingston:** You can correct me if I'm wrong, but this is all from when I was at Infrastructure Ontario.

**Mr. Victor Fedeli:** Yes.

**Mr. David Livingston:** This would have been at the time when I was involved with negotiating the arbitration agreement. That arbitration agreement was successfully signed by everybody, and I believe that document was released or is out there. So any of this information would have been extraneous to that; there'd be no reason to have it.

**Mr. Victor Fedeli:** So you don't feel that a Vapour document that was sent to you on July 28, 2011, has any value here? You can tell, with a straight face, freedom of information, “I have no files,” even though I have thousands.

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**Mr. David Livingston:** But I did not have this file. This email I would not have kept, if that's the question that you're asking.

**Mr. Victor Fedeli:** On page 4 of 5, the Vapour Minute.doc: You're suggesting that that's not a responsive file as well?

**Mr. David Livingston:** This was the minister's briefing, and once the briefing was done, I wouldn't have kept the file.

**Mr. Victor Fedeli:** Go back to page 1 of 5, then. This is from John O'Leary to a whole number of people. Are you suggesting, then, that Laura Miller (OPO), John Brodhead—again, Office of the Premier of Ontario—Karim Bardeesy, Office of the Premier of Ontario, and the list goes on and on and on here—should those people, then, have turned over these documents? Their names are throughout these documents, as well. They're cc'd on some of them, if not all of them.

Let me rephrase it: If there was a document that had somebody, Laura Miller in the Office of the Premier of Ontario, with details on Project Vapour, would that have been a document she should have responded with, in your opinion?

**Mr. David Livingston:** If she had the document, then she should have responded with it. It's a question of whether she had the document, whether she kept it or considered it to be transitory.

**Mr. Victor Fedeli:** Page 5 of 5: again, “Project Vapour.” It's a pretty major document. This is the “Minister Briefing November 2011, David Livingston.” You wrote this, and it's called “Project Vapour,” the slide deck. You still claim you have no documents that are responsive?

**Mr. David Livingston:** In this case, I gave the briefing. Once the briefing was complete and he had the information, then from my point of view there was no need to keep the document.

**Mr. Victor Fedeli:** Okay. So you feel clean with freedom of information; even though you have thousands of documents, you know all about Project Vapour, you're fine to tell the FOI, “I have nothing responsive.” You're good with that? That's your answer to them, four words: “I have nothing responsive.”

**Mr. David Livingston:** As I said in my opening statement, my practice was that once a file had been dealt with, then it was deleted. So I had no files—

**Mr. Victor Fedeli:** Oh, that's right. Honestly, I forgot. You were one of the deleters. Honestly, I did forget that.

Let's go to Liberal gas plant scandal document 2. Here again we're now looking for—this is again another freedom-of-information request, and this is far more reaching, but a limited date now. This is “January 1, 2012 through October 1, 2012 by the Premier, the Premier's office, consultants to the Premier's office, or advisers to the Premier's office relating to the construction, contracting, relocation or any other arrangements associated with the gas-fired power plants once contracted ... or related entities....”

So this is pretty all-encompassing, pretty much anything to do with the gas plants scandal that happened between January 1, 2012, and October 1. You were asked to turn over records, and your answer was, “Nothing here.” You have nothing?

**Mr. David Livingston:** Yes.



**Mr. Victor Fedeli:** No records whatsoever.

**Mr. David Livingston:** Correct.

**Mr. Victor Fedeli:** Period.

**Mr. David Livingston:** Correct.

**Mr. Victor Fedeli:** This asks you not about whether you worked in the Premier's office that day or that week. This is advisers to the Premier. Again, you wrote a fairly major document, Project Vapour—you wrote the plan for Project Vapour, the briefing for the ministers back in November 2011 when they all got hired on after the election. That's you who wrote that, and you still say, "Nothing here"?

**Mr. David Livingston:** So the briefing that was given to the minister in the fall would have been a recitation of facts that were well known. Once the briefing was done, I would not have kept the document.

**Mr. Victor Fedeli:** Okay.

**Mr. David Livingston:** To go back to my opening statement, my practice with respect to files was that once they were done, they were deleted.

**Mr. Victor Fedeli:** Page 3 of 13 of this document 2, "High Profile Projects": You've crafted this document. It's ServiceOntario, ONTC—

**Mr. David Livingston:** Sorry? Where? Three of 13?

**Mr. Victor Fedeli:** Three of 13. This is doc 2. Page 1 of 13 is the document where they asked you under freedom of information, and you said, "Nothing here."

**Mr. David Livingston:** Yes.

**Mr. Victor Fedeli:** Page 3 of that, three quarters of the way down, is "Vapour Lock" and "Vapour" files."

**Mr. David Livingston:** But there's nothing, unless I'm missing it, on 3—

**Mr. Victor Fedeli:** "High Profile Projects" is the headline.

**Mr. David Livingston:** Right, but where does that say who that's from? Was that from me?

**Mr. Victor Fedeli:** It's included in your files that we received.

Let's just go to number 4 of 3 then, if that one has confused you.

*Interjection.*

**Mr. Victor Fedeli:** Oh, 4 of 13. This is to David Livingston. Now you're at the Office of the Premier of Ontario. It's July 11, and throughout it is conversation of Vapour. Let's cut through all the nonsense now. Now you're at the Office of the Premier. This is an email to the Office of the Premier. It's discussing Vapour and yet you have now told—your excuse on the last one was, "That was my IO files. I didn't keep them."

Now you're in the Premier's office. They've asked you for your files. There's no excuse this time. They've asked for files from January 1 to October 1. This is July. This is right in the window, right in the pocket. Why didn't you turn this email over?

**Mr. David Livingston:** As I said at the beginning, my practice with respect to emails was that I receive them. Once action was taken, I deleted the email because it had already been dealt with. I wouldn't have had this email so there would be nothing to respond with.

**Mr. Victor Fedeli:** When would you have deleted this email?

**Mr. David Livingston:** It says, "I am signing off." Once I signed off, then I would have deleted it.

**Mr. Victor Fedeli:** So you have no files whatsoever? You send an email and you hit the delete button?

**Mr. David Livingston:** With every email that I got, I would have to action it in some way, shape or form, or it would sit. So if I had not dealt with it for whatever reason, it would stay. Once I had actioned it—I'd either have made a decision, done a response, forwarded it to somebody else—I would have deleted it, yes.

**Mr. Victor Fedeli:** So again, all of these files on page 8 of 13, again it's from you, "What did you and Jonathan decide about Vapour?": You would have deleted that Vapour file, which would have been what the freedom of information was entitled to receive from you. That would have been gone?

**Mr. David Livingston:** I would not have had that email; correct.

**Mr. Victor Fedeli:** This is very suspicious, by the way, that you have told the freedom of information you have nothing. I have all your files, by the way. I have them here. I have them, but you don't. That's stunningly amazing.

**Mr. David Livingston:** So you would have had them from other people because—

**Mr. John Yakabuski:** That's quite a management practice.

**Mr. Victor Fedeli:** Well, it's a very interesting and very suspect management practice when I've got email after email after email that is responded—did you make any efforts to contact anybody and say, "Look, I've got a problem here. Freedom of information is asking me for all these documents. I remember typing 1,000, 800, 700 documents about Vapour, Project Vapour, gas plants. I wrote a whole slide deck. God, I've got to turn this stuff over. Can anybody help me out here?" You didn't make any calls, no effort whatsoever to try to comply?

**Mr. David Livingston:** It seems to me that there have been, as was said earlier, thousands of pages of documents around gas plants that have been released by others. I had nothing. I simply said what was true: I had no files. My practice with respect to emails is something that I've done. In the private sector this would have been something I did regularly. When you action something, when you deal with something, then you move on. What's the point of keeping it around?

**Mr. Victor Fedeli:** It's no wonder the privacy commissioner had so many questions when she got around to you. This is either outlandish or incredible or unbelievable at best. I just have to tell you that. I've got your files and you don't have them. You made no efforts whatsoever to get them, yet I have them.

**Mr. David Livingston:** I can only repeat what I said—

**Mr. Victor Fedeli:** Okay. Let's go on to Liberal gas plant scandal document 3. I'm changing gears here now. We're over your freedom of information misdeeds here.

We're now into where Hansard—I'm just going to read you a couple of lines from Hansard before I get to document 3. The last time you were here, I asked a very important question about the MOU, the memorandum of understanding.

**Mr. David Livingston:** Right.

**Mr. Victor Fedeli:** And you told us you had nothing to do with that whatsoever. I asked you very specifically. I drew your attention to document 4, Ontario Power Authority, JoAnne Butler's opening statement, a memorandum of understanding was made public, etc., and I asked you, "Were you a party to that MOU?" Your answer was, "So no, I wouldn't have been a party to that." First, you said, "Was that on September 4?" I said yes, that's September 24. You said, "So no, I wouldn't have been a party to that."

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Mr. Tabuns then asked you, "As the chief of staff to the Premier, had you been briefed on the MOU that had been signed with TransCanada?"

Your answer was, "I don't have a recollection of that."

You actually said two dozen times when you were last here that you didn't have a recollection or "I don't know," and you said "I don't recall" six times in the first four minutes of your being here today. So I'm going to ask again: Do you have any recollection of the MOU that was signed?

**Mr. David Livingston:** I think I said at the time, and I'll say again, that it is possible that I received the MOU. But when I said I wasn't party to it, I wasn't a signatory to it; I was not involved with the negotiations. There were people involved with the negotiations directly. They would have come up with that MOU as between themselves. I was aware those negotiations were going on; I was not at the negotiations. That was the context in which I said I was not a party to it.

**Mr. Victor Fedeli:** No involvement in the negotiations and no input to this MOU whatsoever, according to this?

**Mr. David Livingston:** The negotiations were with people from the ministry. I think Infrastructure Ontario was involved. As I said, I was very aware of what was going on, but I was not party to creating the document and certainly not party to signing it.

**Mr. Victor Fedeli:** You were not party to—what was the first thing?

**Mr. David Livingston:** Creating the document.

**Mr. Victor Fedeli:** Creating it? Any input to it?

**Mr. David Livingston:** It was only done by the people who were negotiating, and I wasn't doing the negotiating, so no.

**Mr. Victor Fedeli:** All right. Well let's have a peek at Liberal gas plant scandal document 3, page 1 of 2. This is September 21—

**Mr. David Livingston:** Sorry, is this 3 of 13?

**Mr. Victor Fedeli:** Document 3, 1 of 2. So we're passed 13 of 13; we're now at page 1 of 2. This is September 21, three days before the MOU was signed.

This is a series of emails between parties, yourself included. You're the author of many of them:

"Rachele,

"The deck is being amended by energy to increase the break fee to \$125M. Finance is onside. Once you receive the amended deck, please execute the walkaround. I don't need to see it again."

What is the break fee to \$125 million? What has that to do with?

**Mr. David Livingston:** Going back to the beginning of this, it originated from the Ministry of Energy?

**Mr. Victor Fedeli:** Yes.

**Mr. David Livingston:** So I am presuming that the Ministry of Energy, in its negotiation—there must have been a break fee. I don't specifically recall what it was in relation to.

**Mr. Victor Fedeli:** The MOU?

**Mr. David Livingston:** It was in relation to the MOU?

**Mr. Victor Fedeli:** I'm asking you. This is three days before the MOU, and they're talking about "DL"—I presume that's you—

**Mr. David Livingston:** Right.

**Mr. Victor Fedeli:**—"asked energy to increase the break fee to \$125M (from \$100)." This isn't something they dreamt up; you've asked for this to be done. You're involved in this; you're making a decision about a break fee here. This is a pretty detailed level of conversation for somebody who—you "weren't a party to that MOU."

**Mr. David Livingston:** Right.

**Mr. Victor Fedeli:** Were you a party to that MOU?

**Mr. David Livingston:** No. So energy wants to amend something to increase the break fee to \$125 million, they've got finance onside—

**Mr. Victor Fedeli:** Yes.

**Mr. David Livingston:** Anything that goes to cabinet or requires a walkaround had to go through me, and so I was passing it on to Rachele to have that—

**Mr. Victor Fedeli:** No, no, no, you aren't passing on: "DL asked energy to increase the break fee to \$125M." Is "DL" you?

**Mr. David Livingston:** That's Steen saying that; I'm just reading from the emails. I'm going down to the email from me to Rachele that says, "The deck has been amended by energy to increase the break fee...." I'm presuming from this that this is an energy-initiated document and I'm signing off on it.

**Mr. Victor Fedeli:** So you did have something to do with the MOU then? You understood, you are familiar with the MOU? I asked you if you were—

**Mr. David Livingston:** This is specifically in relation to a break fee. I am not recalling exactly how the break fee fit into the deal. I really don't remember.

**Mr. Victor Fedeli:** You were telling us you weren't aware of this at all the last time you were here—you don't have any recollection of it. Does this help remind you of anything?

**Mr. David Livingston:** No, it doesn't.



**Mr. Victor Fedeli:** Well, let's try document 4 then. This time—again, you tell us you have no involvement, but this is Tom Mitchell, president of Ontario Power Generation. He's talking about you. He's talking to Serge Imbrogno: "You and I need to talk about who and how this 'proposal' gets vetted. I suggest you call a meeting ... with Colin Anders[e]n, David Livingston, you, and I...." These are four very serious people. You've got the president of OPG; the Deputy Minister of Energy; Colin Andersen, the president of OPA; and you. You weren't there for charm. You were there because you're an important player in this whole gas plant scandal. How can you tell us that you have no recollection or that you're not a part of it? You're one of the four people sitting at a table. Three of these are the most senior people here. This is you; you're in the game.

**Mr. David Livingston:** I'm reading the email. It's an email from Tom Mitchell to Serge Imbrogno, the Deputy Minister of Energy, asking that I be there.

**Mr. Victor Fedeli:** Yes.

**Mr. David Livingston:** I suspect that he was asking because I was previously involved at Infrastructure Ontario. I have no recollection of being at this meeting.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you, Chair.

Mr. Livingston, you deleted everything, and yet we've been asking questions for an hour, and the most common response we get is that you don't remember. How did you keep track of things?

**Mr. David Livingston:** The important thing in the office was what files were outstanding. We had fairly detailed project lists that we kept, that represented a summary of all of the things that were going on. There would have been 30 or 40 things on those lists, and we met every couple of weeks to talk about the status of those projects. The way that we kept on top of everything was by sitting down and talking through the lists: "Are we on time? Are things happening the way they should be happening? Are the files moving the way that they should be moving?"

**Mr. Peter Tabuns:** Was there a written record of these files that we're talking about?

**Mr. David Livingston:** The project lists were certainly paper, yes; they were written files. Well, they're not files; they were lists of all the projects that we had and the timelines associated with each of them.

**Mr. Peter Tabuns:** And did you note on these lists the status of things, actions that had been taken?

**Mr. David Livingston:** No.

**Mr. Peter Tabuns:** Okay.

**Mr. David Livingston:** The purpose of the discussion was to discuss where we were on each of these files, and were they on track with the timelines that were established with them?

**Mr. Gilles Bisson:** Just a follow-up to his question: Was the issue of the non-release of documents by the minister part of that list?

**Mr. David Livingston:** No.

**Mr. Gilles Bisson:** Oh. Thank you.

**Mr. Peter Tabuns:** According to the Information and Privacy Commissioner, you broke the Archives and Recordkeeping Act. You just set it aside. It wasn't part of your operations. Why?

**Mr. David Livingston:** As I said in my opening, my practice with respect to emails, and this is what I had been doing for years, was, absent any knowledge, regulations or policies otherwise, once an email was dealt with, once an action was taken, I deleted it, because I used my emails essentially as my to-do list. I wanted to be able to look at it and say, "What haven't I dealt with?" and then be able to prioritize accordingly.

**Mr. Peter Tabuns:** Peter Wallace testified here that he sat down with you. He gave you a legal brief on the requirements to keep emails and keep records. Did you start to respect the law the day after you were briefed by him?

**Mr. David Livingston:** When was that? That was—

**Mr. Peter Tabuns:** In January 2013.

**Mr. David Livingston:** In January 2013, but by then all I had left was personal records, as I mentioned. There would have been no question that, regardless of what the policies or practices were, everybody would have agreed those should have been deleted.

**Mr. Peter Tabuns:** You had no business emails at all from the day that you were told that, legally, you were required to keep them?

**Mr. David Livingston:** This was right at the end of January.

**Mr. Peter Tabuns:** It was all personal from that point on?

**Mr. David Livingston:** There would have been no business files. By the end of January, there certainly would have been nothing.

**Mr. Peter Tabuns:** I was talking to you, I believe, around mid-January, but I would have to check.

Do you remember having that discussion with him?

**Mr. David Livingston:** I don't remember having the discussion with Peter. What I remember is that I got an email from David Nicholl, the chief information officer, and that he had attached certain documents to it.

**Mr. Peter Tabuns:** So even though you were told about this law, it didn't change your practice? You didn't let the people in your office know about the legal requirements, did you?

**Mr. David Livingston:** We're in the last two weeks of the government—

**Mr. Peter Tabuns:** The law still applies. I presume the law doesn't lapse in the last two weeks of a government, that it has some stability.

**Mr. David Livingston:** Fair enough, and you are correct that with two weeks to go, I did not pass that on.

**Mr. Peter Tabuns:** Okay. A good question: Did you keep a daybook?

**Mr. David Livingston:** No.

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**Mr. Peter Tabuns:** So it all depended on those project files and those lists?



**Mr. David Livingston:** And the discussions that we would regularly have about them.

**Mr. Peter Tabuns:** So email is gone, your memory is not serving you really well today, so everything was those project lists?

**Mr. David Livingston:** The project lists and the discussions were the way that we kept organized, kept knowledgeable of what was going on with respect to all the files we had to deal with.

**Mr. Peter Tabuns:** Now, when Peter Wallace talked to you in August 2012, you talked to him about deleting email accounts—

**Mr. David Livingston:** Closing email accounts.

**Mr. Peter Tabuns:** Closing email accounts—well, what he said to us is, “We provided him with background information, connected him with the appropriate officials ... who explained to him the mechanics of how you delete a document and then how a document is deleted from the trash, and also the protocols and mechanisms by which tapes are backed up for disaster recovery” etc. You seemed to get a very in-depth briefing on the existence and deletion of emails. Do you have a recollection of being told about all this?

**Mr. David Livingston:** As I said in my opening, I definitely recall a conversation with Peter, and as far as I was concerned, that was about closing of email accounts for people who were no longer staff members. You know, we became aware that there were emails that were piling up, they were unread emails, and so it was about closing those accounts so that that would not occur, and then, with the closing of the account, presumably those emails would have been deleted.

**Mr. Peter Tabuns:** Now, he gave you, as he says, “informal or verbal advice” in January, and he says, “observing that, at a minimum, the optics of having absolutely no records or of overriding hard drives would be very challenging and might remove a defence of innocence, of inadvertence....” What you did was set things up so the Premier could never say, “Well, I have these documents showing that I behaved in this way.” You wiped the slate clean.

**Mr. David Livingston:** With respect to the electronic file management, as I said, as the chief of staff, there would be no reason for me to be creating electronic records. Everything I would have received would have been coming from somebody else, and so the only files I would have had would have been my own files, and those were the ones that were deleted. I can’t imagine that there would be a policy that would have said that those kinds of files should have been kept.

**Mr. Peter Tabuns:** But, in fact, Mr. Fedeli just went through a variety of emails showing you commenting on a number of aspects of the government’s operations and, in fact, those were not just, “Hey, can you bring me a doughnut?” These are substantial matters about contracts the government was working its way through.

**Mr. David Livingston:** They were emails. Action was taken with respect to the email, and once the action was taken, the email was deleted, but the documents that they

were associated with would have been cabinet documents. There would have been other things that would have been released through freedom of information with the ministry. So I would consider my contribution to it, if we take, for example, the issue about the break fee, was as part of the process of getting it approved by cabinet, so those documents would have been readily available to you through other sources.

**Mr. Peter Tabuns:** Well, having had the Information and Privacy Commissioner before us, having read her report, she was pretty clear that the Archives and Recordkeeping Act was about preserving a record of how government acts, not about making sure that you can delete everything that’s on your computer.

In fact, Peter Wallace said to us, one of the things that he tells us he said to you, he provided you “with advice around how that would look”—that’s wiping out all these files—and “that would give reference to—that this would be consistent with the behaviour of an organization that wipes all its records, and that is not a normal organization in this context.” He’s right. It’s a democracy. We require records to be kept so governments can be held to account and so citizens can access information. You didn’t take these as red flags from him about the way your office was operating?

**Mr. David Livingston:** There are hundreds of thousands of documents of information around about the gas plants. My practice with respect to my own emails and my own electronic records was as I said at the beginning: It was to take action, delete them. With respect to electronic files, there would be no need for me to re-create them. Everything I would have received would have been created by somebody else.

The main thing that I would like to emphasize is that these were practices, as I’ve openly said here, as I openly said to the Information and Privacy Commissioner, and we didn’t do any of this in relation to gas plants in particular. It’s not like we were picking on them and said, “Let’s make sure we get rid of”—

**Mr. Peter Tabuns:** No, I believe you were destroying documents in all your files. This was of great consequence—

**Mr. David Livingston:** It was a practice that I have had for some time, absent any sort of regulations, policies or direction to do otherwise.

**Mr. Peter Tabuns:** Well, you did this province and that Premier a disservice by breaking the law. You did a great disservice. You had a requirement to follow this. You were told by the chief of the civil service that you were supposed to be following these rules. You were supposed to tell your staff. That never happened.

**Mr. David Livingston:** The discussion with the chief of the civil service was in January 2013, when we had two weeks left. If I had had that kind of discussion in May 2012, when I arrived, then I think it is safe to assume there would have been a very different process followed.

**Mr. Peter Tabuns:** And you didn’t ask, “What’s the legal framework I operate within”?



**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Mr. Delaney, 10 minutes.

**Mr. Bob Delaney:** Mr. Livingston, you started with the Office of the Premier in May 2012, right?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** I just want to follow up on something that I find very interesting. In the documents that Mr. Fedeli circulated, the very first one on the top of the page is an email from you dated October 2012, and it's asking for freedom of information. Then, there are references throughout it to documents or emails that passed through you at Infrastructure Ontario the previous year. You wouldn't have had all of your IO files copied over to the Office of the Premier's computers, would you?

**Mr. David Livingston:** No.

**Mr. Bob Delaney:** So in other words, when you ask for a search that is limited to records from the Office of the Premier, all you can search are records that come from the Office of the Premier during the time period in question. Correct?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** So in other words, without violating the terms of the freedom-of-information request that was provided to you, you couldn't get access to documents that you had created the previous year when you were with a different branch of the government from which no documents had been requested in the FOI request in the fall of 2012, right?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** Good. Thank you.

When you were the CEO of Infrastructure Ontario, then-secretary of cabinet Shelly Jamieson asked if you could help support the negotiations between the province and TransCanada. I'm going back to something that the committee is actually charged to do, which is suggestions on locations for energy infrastructure.

When you last appeared before this committee, you described your role in the negotiations between the province and TransCanada over the Oakville plant as a facilitator, and you emphasized that you didn't have any mandate to present options to TransCanada. Later on, the opposition alleged that you were ill-suited for the role. Clearly this is not the case. In fact, former Deputy Minister of Energy David Lindsay had testified that you were very well positioned to support these negotiations, given your expertise. Shelly Jamieson said, "I decided David Livingston was the person I thought I could ask to undertake this assignment...."

"David Livingston comes to us from the private sector, but also in his job at Infrastructure Ontario, was used to dealing with publicly traded companies and understands that world and can present himself in that way."

Going back to that time, what did you feel were your qualifications to take on that role?

**Mr. David Livingston:** Both going back to my 30 years in banking and the time at Infrastructure Ontario, I had dealt with complicated negotiations between all

kinds of different companies. I think in this particular case, it was that expertise in trying to bring parties together that was being called upon. I think it was also helpful in this case that I had some objectivity about what could be done; I could have a conversation with TransCanada that they felt was helpful. In the end, I was able to bring the parties together to be able to come to an agreement on something that everybody was satisfied with.

**Mr. Bob Delaney:** Okay. In terms of the decisions to relocate these two plants, we've heard testimony from literally dozens of staff that there were serious concerns with the siting of both plants. I also think it's important to note here that while the province sent out the directive for the general area where the plant should be built, it was the companies themselves that chose the sites. For example, both sites had been zoned by the town of Oakville and the city of Mississauga as industrial, and in the city of Mississauga's case, it was zoned industrial/power plant. So there is no suggestion that the government was prescriptive in its choice of the site; in fact, it was the companies that had to find a site zoned by the municipality for that purpose and acquire the land and present a case that they had legally and properly acquired land zoned for the purpose by the municipality.

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This is a process that has been reviewed by the Ontario Power Authority and the Independent Electricity System Operator, who've submitted a very helpful report to the government with their findings. It's also one of the topics that we're reviewing here at this committee, and we've heard recommendations from a variety of experts in the field.

Based on your experience with these two gas-fired peak power electricity-generating plants in particular and the lessons learned, could you talk to us a little bit about recommendations you would have on how the province, going forward, can better improve the siting process for energy infrastructure?

**Mr. David Livingston:** I will give a comment here, but I guess I would preface whatever I say with the fact that the Ontario Power Authority, the Ministry of Energy and Ontario Power Generation, to some degree, are the experts in the field. There is no way that I would have a view or a capability to give anything that would be contrary to theirs. So I think that whatever I might say may be interesting, but not that useful, because I am not an expert in this field.

But it does seem clear that, while cost is certainly a factor in a gas plant—how much it is going to cost relative to an alternative site—the view of the community trying not to be in a position where things get too far advanced where there's money being spent is, obviously, the right thing. So having some type of forum, some type of engagement with the community about what they're looking for, would seem to be an appropriate step.

**Mr. Bob Delaney:** Okay. Any further thoughts you may have from the perspective of either the municipality

or the Ministry of Energy on recommendations on locating energy infrastructure?

**Mr. David Livingston:** No. I have no further recommendations.

**Mr. Bob Delaney:** Just one last point, then: Mr. Fedeli referred to a briefing that you had given based upon what appears to be a PowerPoint presentation that you had created that's dated November 12. November 12 was a point at which you were still employed by Infrastructure Ontario.

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** The request for documents was made while you were with the Office of the Premier in 2012, and the scope of that request for documents was just the Premier's office. Correct?

**Mr. David Livingston:** Okay.

**Mr. Bob Delaney:** That would mean that, by definition, the document that you had created, which was turned over in a subsequent request for documents, would not have been within the scope of that request. Correct?

**Mr. David Livingston:** Correct.

**Mr. Bob Delaney:** That's all I have to say, Chair. Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you kindly. Let's pick up on Mr. Delaney's weak attempt to try to belittle freedom-of-information requests. Both he and you, basically, are saying because one request was specifically—if you look at the letter of the law, much like when they withheld 20,000 documents because it said “SWGTA” instead of “southwest GTA,” these kinds of things. Do you agree with him that because you were at Infrastructure Ontario when that request—is that why you're saying you didn't turn those documents over, or because you had deleted them?

**Mr. David Livingston:** I didn't have the documents. Clearly, the document existed because it's here, and so—

**Mr. Victor Fedeli:** But you deleted the document.

**Mr. David Livingston:** The—

**Mr. Victor Fedeli:** Did you delete that document?

**Mr. David Livingston:** I did not have the document in the Premier's office.

**Mr. Victor Fedeli:** Okay. Why don't we go to documents you did have in the Premier's office, then. I've talked about those. Mr. Delaney doesn't like to remind you that there were documents, when you were in the Premier's office, that meet the date requirements. I'd given several examples of that. Let's go specifically; I want you to go to Liberal gas plant scandal document 10, page 1 of 2. Now, this is from William Bromm to Jennifer Rook, “Committee powers to compel documents,” document retention—these are all the documents. “Thought you might want to see the three notes we did for the Secretary's discussion with David Livingston. All info you and Dave know of course.”

So page 2 is a briefing note, “Office of the Secretary of Cabinet....

“What are the legal requirements related to retention, deletion and subsequent search of government records?”

Have you ever seen this document before? This is August 3, 2012. He is saying that they did this for the secretary's discussion with you.

**Mr. David Livingston:** Right.

**Mr. Victor Fedeli:** Did the secretary discuss this with you?

**Mr. David Livingston:** I met with the secretary every week throughout my time in the Premier's office. I note this is a briefing note to him. We may well have had this discussion—

**Mr. Victor Fedeli:** Well, William Bromm: He's in the Cabinet Office. He's saying, “These were the notes we did for the secretary's discussion with David Livingston.” So he seems to feel you've seen this. I know you have not been able to recollect a lot of things, but do you recollect the meeting?

**Mr. David Livingston:** I don't know how he would know. These were briefing notes done for the secretary. The secretary then would be—it's within his power to decide what he's going to brief me on and what he's not going to brief me on.

**Mr. Victor Fedeli:** Well, this is William Bromm from Cabinet Office, and this is August 3. He's telling us that the secretary told you about record retention.

**Mr. David Livingston:** I'm sorry. I don't mean to quibble; all I'm reading is what's here. It's that they did for the notes to the secretary. What was discussed in the meeting would have been between the secretary and I.

**Mr. Victor Fedeli:** So did the secretary discuss anything about records retention with you around August 1? Documents seem to show three of them: “Records retention,” “Committee powers to compel documents” and “Options to address document production orders.” Those are three pretty seriously named documents. He either sat down and talked to you about them or he didn't.

**Mr. David Livingston:** I don't know.

**Mr. Victor Fedeli:** You don't know.

**Mr. John Yakabuski:** You don't recall.

**Mr. Victor Fedeli:** You don't recall or you just don't know? You just don't know.

This is a pretty serious topic. This is about how to keep your records, and it's August 3. On page 13 of 13—you don't need to look at it; you can trust me on this. It's August 16—two weeks after they told you to keep all your records—there's a David Livingston (OPO), August 16, talking about “Vapour.” That would have been a document that meets the compliance of the Office of the Premier. You're not at Infrastructure Ontario anymore. You're still employed by the government. You're now in the Premier's office. They asked you for all your records on Vapour, gas plants and all kinds of dates and items—but this clearly falls within both of those freedom of information. On August 1 you were told how to keep your records, and now on August 16 you don't turn this document over?



On page 9 of 13, again, August 25, 2012, right in the pocket, “David Livingston (OPO)” —this is not an Infrastructure Ontario thing, as Mr. Delaney tries to slough it off. You’re in the Premier’s office. This is August 25, 2012. It meets both criteria. It’s about “Vapour/Vapour-Lock.” It meets either FOI. You were told not to delete your emails on August 1, and this is August 25. Why did you delete these ones after you were clearly told not to delete your email any longer? Why did you continue to delete email after you were involved with the Cabinet Office, the secretary—not to delete the email?

**Mr. David Livingston:** I would repeat: This was a briefing document for the secretary. What the secretary discussed with me I don’t recall. The emails that you’re referring to would have been emails sent to me by somebody else, and there would be no reason for me to keep an email sent to me from somebody else—

**Mr. Victor Fedeli:** Other than the fact that the Secretary of Cabinet talks about “business records” required.

“All ministries have adopted the ... Common Records Series.” This is a detailed, confidential solicitor-client privilege and not for distribution. It’s a pretty high-level document that says, “You’ve got legal requirements to retain your documents and not to delete things.”

**Mr. David Livingston:** I’m sorry, which document are you referring to?

**Mr. Victor Fedeli:** I’m still back at the one that you can’t remember whether the secretary talked to you about it, page 2 of 2.

**Mr. David Livingston:** This is the one that says, “Briefing Note Office of the Secretary of the Cabinet.” That’s not a briefing note from me.

**Mr. Victor Fedeli:** Yes, and on the page before that it says, “Thought you might want to see the three notes we did for the Secretary’s discussion with David Livingston. All info you and Dave know of course.” So you’re trying to tell me now that maybe the cabinet secretary—do I need him, the cabinet secretary, here to tell me whether you have this document or not? You don’t have it, because you deleted it.

**Mr. David Livingston:** So, as I said, I had conversations with Peter Wallace every week, and it is entirely possible—

**Mr. Victor Fedeli:** So we can only make an assumption, then. If you met with Peter Wallace every week and William Bromm from Cabinet Office—he discussed this with you; we can presume that he discussed it with you. Why would you continue deleting your emails in late August when, on the first of August, you were told, “Hang on a second. Flag on the play here. We’ve got to start keeping these emails”? Why would you continue doing that to gas plant documents?

**Mr. David Livingston:** So there was a discussion earlier about what constitutes a transitory record, as a for instance. I would—

**Mr. Victor Fedeli:** So now you deleted it because it was transitory.

**Mr. David Livingston:** The discussion with Peter would have been a verbal discussion. I would have taken

away from that that there are still no policies, there are still no practices with respect to email management, and I would have followed the practice that I had had basically all my life up until that point.

**Mr. Victor Fedeli:** I don’t know how he can say it with a straight face, to be perfectly honest. I truly don’t.

Let’s go back to your continued allegations that you had very little to do with anything to do with the gas plants. Liberal gas plant scandal document 6: If you go to page 3 of 5, this, again—we’ve got Serge Imbrogno, we’ve got Peter Wallace from finance, we’ve got all kinds of high-level people here. “David Livingston was asked to resolve ASAP.” You go down here: “David has already settled the major business issues with TCPL.”

**Mr. David Livingston:** I’m sorry. Which document are you referring to?

**Mr. Victor Fedeli:** Page 3 of 5, document 6.

How much time have I got, Chair?

**The Chair (Mr. Shafiq Qaadri):** Two minutes.

**Mr. Victor Fedeli:** Two minutes.

I mean, you’re in this. You are so deeply involved. Go to document 7, then, a couple of pages later. This is your cabinet briefing. This is “Project Vapour Minister Briefing November 11,” written by David Livingston. Forget the fact that you didn’t turn this over; we’re beyond that now. Let’s go to the second-last page here. This is the last—

**Mr. David Livingston:** May I respond to the question?

**Mr. Victor Fedeli:** No, I’ve only got a minute left. This is the critical issue, you wrote here. This is a document you—“ratepayer vs taxpayer.” You know what that tells me, Mr. Livingston? That you knew there were two costs. You knew. You briefed cabinet that there were ratepayer and taxpayer. But sadly, cabinet only comes out and says \$40 million for Oakville, \$190 million for Mississauga. Those are only the taxpayer numbers. The ratepayer number, we now know, is \$275 million minus \$190 million for Mississauga. We’re waiting for the Oakville one from the auditor. You knew—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** —and you briefed cabinet that you knew there were two sets of costs. So Kathleen Wynne knew; she was in cabinet at the time. The energy minister knew. The Vapour minute that you prepared the July earlier includes two sets of costs. You knew there were two sets of costs. So I’ll ask you: How much is the cost to the ratepayer for Oakville?

**Mr. David Livingston:** These documents you’re referring to were all in July 2011, when I was actively involved with the negotiation of the arbitration—

**Mr. Victor Fedeli:** Now we’re at November 2011. You wrote a briefing to the ministers and told them there are ratepayer and taxpayer costs. You know there were two sets of costs, and you stood there and watched them stand up in the Legislature and tell us \$230 million is the total cost, but you know and they know. Why do you think they continue to say the total cost was \$230 million when you’ve already told them there are ratepayer costs



that they haven't disclosed, and taxpayer costs? How much were the ratepayer costs?

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli, for your questions. Thank you, Mr. Livingston, for your presence. Committee members will take a five-, 10-minute-or-so recess.

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Pardon?

**Mr. Gilles Bisson:** Can we deal with the motion?

**The Chair (Mr. Shafiq Qaadri):** When we return.

*The committee recessed from 1634 to 1644.*

## ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. We're back in session. I'll invite our next presenters, Pat Vanini and Russ Powers of AMO, the Association of Municipalities of Ontario, to come forward. Both will be sworn in momentarily.

Ms. Vanini.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Ms. Pat Vanini:** I do.

**The Chair (Mr. Shafiq Qaadri):** Mr. Powers?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Russ Powers:** I do.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Welcome. Your five-minute combined address begins now.

**Mr. Russ Powers:** Thank you for providing the Association of Municipalities of Ontario with the opportunity to contribute to your discussions.

As noted, I'm the president of AMO, which represents nearly all of Ontario's 444 municipalities. Our role is to support and enhance strong and effective municipal government in Ontario. We share the municipal perspective with policy-makers at the provincial and, at times, the federal level with the aim of developing stronger public policies with better outcomes.

We understand that part of your mandate is to make recommendations on the future planning and siting of energy services. Ontario's municipalities welcome the opportunity to provide input on this important matter, and specifically on the siting of large energy projects. It is clear that on this front, a better path is needed. My remarks will focus on how we can move forward. It would be inappropriate for AMO to comment on the gas plant cancellation component of your mandate, as we have no direct knowledge.

AMO advocates for a new process that demonstrates key principles of municipal government and community involvement early on—and I emphasize “early on.” This contributes to transparency and is our first area of advice. Going forward, communities need to understand what decisions are being made, how they are made, as well as the costs and consequences of different alternatives. It is essential that the science, the rationale and the options are dealt with in public information sessions and other forums and consultations before—and I emphasize “before”—a project moves to the RFP stage.

Most importantly, the public needs to be actively involved, not just notified. Local governments and communities need to have a voice and to know how this voice has been acted upon, as well as why it may not be possible to accommodate certain options, alternatives and concerns.

The new process also needs to recognize that municipal governments have a duty to their citizens. We are mandated to protect public safety, to provide adequate infrastructure, protect the environment, stimulate economic viability, and balance corporate well-being against individuals' needs and interests.

Given the broad range of concerns and the complexity involved, it seems to us that we need more than just energy experts to plan energy. Choosing the right location goes beyond identifying just the energy needs in a region, but to an understanding of local plans, initiatives and concerns, and, I'll call it, local ambitions. Major development proposals need to be viewed through the triple bottom-line lens, meaning that social, environmental and economic costs and benefits must be addressed. The provincial interest and local interest need to be mutually evaluated to tackle both local and broader needs.

Finally, municipal governments can provide valuable insight not only on what sites would work best, but also how to maximize public investment by integrating new infrastructure into local land use and other planning. Integration of planning needs must occur earlier on.

Linking into local land use planning early on just makes sense. The planning process in Ontario is a mature one, understood, and can be the vehicle to bring forward change and move forward.

Doing it well does take time. It is important that the process respects the time frames required for normal municipal business. The development of municipal comprehensive planning documents can take upwards of 18 months before adopted, let alone approved. Good, integrated planning with solid, meaningful input will take time. As a process, it also needs to recognize that across Ontario, municipal governments have different capacities and priorities. It needs to accommodate municipalities that have few staff and lack expertise or the resources to purchase that expertise.

One thing I have learned as president of AMO is that when governments work together, we are able to come up with improved solutions that serve the public well. Thank you for the opportunity to address this committee.



**The Chair (Mr. Shafiq Qaadri):** Thank you. I'll begin with the government side. Mrs. Albanese.

**Mrs. Laura Albanese:** Thank you very much for being here today.

As you may know, part of the mandate of this committee is to provide recommendations on how we can improve the siting process for large-scale energy projects. We've asked you here today because you have extensive experience in municipal-provincial relations and have been advocating for the interests of municipalities for many years. Between this experience and your roles with AMO, you are, in our opinion, uniquely placed to speak to the interests of Ontario's municipalities.

A very significant part of our commitment to improve the siting of energy infrastructure in Ontario relies on listening to municipalities to learn how we can better engage them in the siting of energy infrastructure. So we will certainly be asking you some questions about this today.

1650

But to start, I wonder if you could tell us a little bit more about your experience working in the area of municipal-provincial relations, your prior experiences in government and how you came to be part of AMO.

**Mr. Russ Powers:** Myself?

**Mrs. Laura Albanese:** Yes.

**Mr. Russ Powers:** I am entering my 30th year of government involvement. I was formerly a councillor and deputy mayor of the former town of Dundas. I served as a member of Hamilton-Wentworth regional council. I was also a member of the newly amalgamated Hamilton city council up until the point I went to Ottawa. I was a member of Parliament during the 38th Parliament of Canada and, upon being retired by the public in 2006, I thought I would be able to take advantage of golfing and winters in a warmer climate. But I was enticed back into the municipal sector, and in 2006 I was re-elected as a municipal councillor on Hamilton city council. At that point, I joined AMO, and over the time period got more involved. Last year, I was elected president of AMO, after serving as a vice-chair of AMO for a couple of years.

**Mrs. Laura Albanese:** I understand you were intimately involved with the changes to the Planning Act and the legislation that was introduced during the mid-1990s. I wonder if you could take a little bit of time to tell us how that altered the relationship between Ontario and its municipalities.

**Mr. Russ Powers:** I think I'll let Ms. Vanini answer that. I myself can certainly speak from a local perspective, as it related to my municipalities, but certainly Ms. Vanini, who is our executive director with a planning background in that herself, could contribute to this more, if you don't mind.

**Mrs. Laura Albanese:** Absolutely. Please.

**Ms. Pat Vanini:** I think, as people say, I'm a recovering land use planner.

The planning system in Ontario—to be frank, I started with the province as an employee in the 1970s, when in

fact all planning approvals were done at the province. There were three divisions for official plans, subdivisions and zoning bylaws. I think now most of the approvals of those documents, save and except some of the major official plans, are delegated to upper tiers. So over way too many more years than I'd like to do the math on—I just had that moment; that's a lot of decades there—the province has evolved the planning system so that it really does speak more toward its own provincial interest, and there is a different kind of relationship as a result. So it's a little less hands-on, on day-to-day matters, but really speaking through more of the broader policy statements.

We've also seen the provincial policy statements under the Planning Act evolve. As well, I think there's a myriad of other documents through Oak Ridges moraine, Smart Growth and the Niagara Escarpment Commission. I will say that there are still about 200 pieces of legislation and regulation that impact municipal activity, not just the Planning Act.

So I think that when the president talked about the responsibilities and his comments around what councils have to do in terms of public safety and infrastructure—all those things—that's still true. The rules and the authorities may have changed over time.

**Mrs. Laura Albanese:** So you were with AMO when the first memorandum of understanding between the province and the municipalities was introduced?

**Ms. Pat Vanini:** I was.

**Mrs. Laura Albanese:** And at the time, it was, I guess, the first kind of agreement, regarding consultations at least, anywhere in the country. How important was it?

**Mr. Russ Powers:** Oh, it was extremely very important, and we still are the envy—I just returned from meetings with my colleagues in the provincial and territorial associations—Ms. Vanini meets with them on that—and we were the envy of the country from the standpoint of regular ongoing dialog. In this case, Ms. Jeffrey, as Minister of Municipal Affairs and Housing, and I co-chair the memorandum of understanding table, which meets on a monthly basis to discuss issues of importance to us. And the importance of the whole thing is, I call it, the pre-consultation; in other words, the ability for us to have input to what I'm going to call outreach. One of the things I prefaced is, the fact is that getting out early enough and having that consultation is so important to the success. If there's anything that we espouse to in those discussions of MOU, it is the element of earliness and pre-consultation with everyone that proposed legislation will impact.

**Mrs. Laura Albanese:** Thank you. I would like to move now to some questions about the electricity system in Ontario. From AMO's perspective and from what you've heard from municipal governments across Ontario, how does Ontario's energy situation compare with what we had a decade ago, particularly in terms of reliability, in your opinion?

**Mr. Russ Powers:** Thank you for the question. We believe that there is some improvement. Over the period



of time, there has been some improvement. There's a direction to providing a source of energy that will support the demands of the community. The challenge that we find, notwithstanding the evolution to the supply, is the transmission; the ability to transmit the energy to end-users is something that we still have a concern about, and we've expressed that multiple times. But certainly the types and the sources and that have increased substantially, and how it gets to the customers is still a concern of ours.

**Mrs. Laura Albanese:** Bruce Campbell from the IESO testified before this committee in August. When we asked him about the changes in the energy system over the past few years, he talked about the effect that phasing out coal has had on the system, and he explained that coal is being replaced by investments in natural gas, wind and solar.

As he described it, what we've been doing is putting in place the tools and learning how to operate a very differently configured system, one that we can operate just as reliably, but one that is very differently configured from what had been the practice for many years, and very low carbon.

Does AMO have a position on the types of generation that Ontario invests in, and the makeup of its energy supply?

**Mr. Russ Powers:** The answer is no, we take no fixed position on it.

The fact that we deal with high-level positions—a lot of our municipalities—if we were actually to have this dialogue amongst our membership, I don't think we'd come to a consensus. We have municipalities that are willing to consider wind power. We have other ones that are willing to consider nuclear energy. We have other ones that are prepared to consider EFW. The fact that there are so many opportunities for the provision of what I'm going to call "replacement" energy—very clearly they moved away from coal, and then we had the move away from fossil fuels—a very, very positive move, I think, for all of us as it relates to greenhouse gases, from that standpoint. But we have no consensus with regard to "preferred." We leave that up to our municipalities to consider themselves when they take into consideration the elements of the Planning Act and how it impacts their particular municipality.

**Mrs. Laura Albanese:** Could we say that clean energy sources could be preferable to other sources, or would that not be the right statement?

**Mr. Russ Powers:** Probably the statement is that anything that is an improvement over fossil fuels is an improvement for our environment.

**Mrs. Laura Albanese:** You may be aware that the Ministry of Energy is currently consulting with Ontarians to discuss the future of our long-term energy plan. To date, they have received over 2,000 responses. Has AMO participated in any of those consultations?

**Mr. Russ Powers:** I'll let Ms. Vanini answer that. Yes, we have been very, very actively involved, including myself, in those dialogues.

**Ms. Pat Vanini:** Yes, we're part of that 2,000 figure. To the credit of OPA and IESO, we've had some conversations on a number of occasions. There is a written response to them. We've also provided some commentary on the report that was just released. If the committee would like access to that, we can make that happen.

**Mrs. Laura Albanese:** Could you share what kind of feedback you provided, in general?

1700

**Ms. Pat Vanini:** It's a long letter—

**Mrs. Laura Albanese:** It's long, so maybe—

**Ms. Pat Vanini:** —and it covers a number of things, both in terms of long-term energy—the plan and the content—and some of the broader context from municipal government as well. It might be just better to provide it to the committee, so I don't necessarily overemphasize or de-emphasize something unnecessarily that is otherwise put in the letter.

**Mr. Russ Powers:** I think an important one was the one that I prefaced in my opening remarks: the fact of doing the outreach and consultation, with anyone who's going to be affected, very early in the process. That was one thing that we emphasized. You'll see that in the document, the fact that sufficient lead time and appropriate consultation must take place.

**Mrs. Laura Albanese:** One of the mandates of this committee is to develop recommendations on improving the process of siting infrastructure in the province. We've had over 50 witnesses who have come before this committee, and many of them have provided valuable feedback and advice. Many, especially members from the Mississauga and Oakville communities, have stated that there should be a better consultation process with local residents, right from the very beginning of the siting process, just as you are suggesting. So based on your experience, what role can engaging with the local communities play to better support the energy infrastructure siting process? If we engage early, in other words, what difference can that make?

**Mr. Russ Powers:** Well, I'll start off, and if you would allow Ms. Vanini. That is, very early in the process, the proponents—whether it's a private entity or whether it's something that's operated by the province of Ontario—would know whether there is support or opposition for it. Very clearly, the issues would come to the surface, very, very early in the process.

It would also raise the issue of what I'm calling siting from a planning perspective, from a social-economic standpoint. An early, and open—and I do mean open—dialogue with the potential partners would allow for a meaningful siting, if it's to proceed, and also provide an understanding as to what I'm going to call the positives and the negatives that may result.

And if you'll allow Ms. Vanini to complement this.

**Mrs. Laura Albanese:** Sure.

**The Chair (Mr. Shafiq Qadri):** Just as you continue there, Ms. Albanese and Ms. Vanini, I'd just like to acknowledge, for members of the committee, the



presence of newly elected Percy Hatfield from Windsor-Tecumseh, who is unofficially here but most welcome.

Go ahead.

**Ms. Pat Vanini:** Thank you. We don't know who he is.

What I would also add is that one of the things that is probably important underneath those words "public engagement" is making sure that they have an understanding of what the needs are. Some of the recommendations in the report around better long-range planning on energy needs are a positive move, I think certainly, people understanding what the different energy supply options are and what the pros and cons are for each of those options. Behind that, too, is what the president has said: What are the social implications, what are the economic implications, and what are the environmental implications? How does that, then, relate to some of the other things that are going on in the community?

One thing that I think happens is that municipal governments, when they're doing their own planning, whether it's a new official plan or a zoning bylaw or a secondary plan, go beyond the minimum requirements for notification in public. I think that over the years municipal governments have made a really good art of public consultation, involving them and making sure that they have the right information, because when a decision is made, you also not only have to say what the decision is, but why another kind of decision didn't happen. They need both sides of the equation. So it's not just, "This was the decision," but it's why this other decision didn't happen, to understand what was behind that.

I think we need to sort of, quite frankly, unplug the word "engaged" a little bit to talk about what that really does look like and feel like. It will be probably different across this province. This province is extremely diverse, from where we're at today in this city to whether you're in Kenora or in Shuniah or in Timmins or anywhere else in southern Ontario. We're not all the same, and those things need to also be embraced in any sort of engagement process, to use the current term.

**Mr. Russ Powers:** And then going beyond what I'm going to call the secular municipality, one of the suggestions from an energy standpoint is that they look at it from a regional perspective.

**Ms. Pat Vanini:** Right.

**Mr. Russ Powers:** That builds on what Ms. Vanini has indicated, which is the fact that not only do you look within your own borders, but you look beyond your borders to not only your neighbours, but also that a decision you make may very well impact a neighbour 100 kilometres down the road, from that standpoint.

My experiences over the years, from my municipality's standpoint, is that we do the outreach to our municipalities beyond our borders, in order to determine impacts that we might not have thought about: transportation linkages, watershed impacts, those particular things. An intense dialogue and an appropriate dialogue early in the process would make things a lot easier.

**Mrs. Laura Albanese:** I had another question on engaging the local communities, but I think in some ways you've answered some aspects of that. My question was, in your opinion, what are the most effective ways, and are consultations enough? Just what we call—if they're adequate, let's say, or if there are different way to consult, I guess.

**Mr. Russ Powers:** I suppose it's in the definition of what consultation is. In other words, I believe that in the vast majority of the municipalities, and as Ms. Vanini indicated, we go beyond what's prescribed in the Planning Act. We do the outreach; we do everything within our ability. I believe the providers of energy, in siting a location, should do exactly the same thing: Go beyond the minimum and optimize the opportunities to solicit comments.

**Ms. Pat Vanini:** If I could just add to that, there probably will be a bit of a temptation to regulate notification etc. I guess I would urge the committee to think about what that might look like across Ontario. Again, as the point was made, municipal governments have been doing the consultation business a long, long time in their communities, and not just on planning pieces but other activities. What might work well in one municipality may not work well in another. I think there's probably a way for the government agencies to in fact find out what does work well in a community and build on that.

Again, they are minimum requirements municipal governments exceeded. I think we've got, as public entities, probably a higher benchmark—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mrs. Laura Albanese:** One last question, and I'll try to be brief. One of the people that testified before us was Dr. Alan Levy a few weeks ago. We asked him sort of the same question. He recommended that energy need and supply should be taught at an early age and included in the school curriculum. What do you think of that idea?

**Mr. Russ Powers:** Are we talking about things such as water conservation or energy conservation?

**Mrs. Laura Albanese:** Well, he said it should start at the schools. It's as important as clean water. It's one of the most important things in our society. I think he was talking about the supply, the energy, the electricity. So it would be less rhetoric towards electricity prices. We have to evaluate carefully; we have to plan for it carefully. He was saying that we should teach that to our kids at an early age.

**Mr. Russ Powers:** I think any early education provision to—I mean, I have grandchildren who, if I was to leave a light on, I'd get corrected—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Albanese.

To Mr. Clark of the PCs: 20 minutes.

**Mr. Steve Clark:** I just want to take this opportunity to welcome both of you to the committee. I appreciate the work that the association does, and I'm a proud past president of the association.

I really do want to take a moment just to talk about the last paragraph of your presentation, where you talk about governments that work together.



I know that in a minority parliament, you could have taken a different path, perhaps a more traditional path, in trying to deal with issues. Certainly from my perspective, as the critic for municipal affairs and housing for the Ontario PC Party, I really do thank you for having a number of meetings with us to talk about issues. The arbitration issue that I brought up in question period certainly is one that—I value the dialogue that we’ve had because, as you know, the MOU—private members’ bills are outside of it. Pat, if I could put words in your mouth, I think that at one point you called that a bit of a problematic situation, where you don’t have that opportunity to have dialogue before it’s tabled. So I do, on behalf of our House leader, thank you for meeting with us and helping us understand what municipalities are asking for in terms of arbitration reform. I wanted to start my comments that way.

1710

It’s also interesting: At the committee, we’ve heard people use the term, when it comes to Mississauga and Oakville, of “not willing hosts.” I know that in Ontario right now, and certainly at your convention in Ottawa three weeks ago, when people used the term “not willing hosts,” they were talking about municipalities that didn’t want wind projects in their riding. But this whole issue of “not willing hosts” for Mississauga and Oakville certainly came to the floor of this committee, because both Mississauga mayor Hazel McCallion and Oakville mayor Rob Burton testified that their councils were vehemently opposed to the gas plants being sited in Mississauga back in 2004 and in Oakville in 2009, but in terms of how the government dealt with their objections, they fell on deaf ears. Certainly, the government pushed forward with siting both of those plants in those two communities and only made the change to stop that once they realized that the seats for their particular members were in jeopardy.

I guess my first question is: From your perspective as the head and executive director of Ontario’s voice of municipalities, should those plants have been sited in those two unwilling hosts in the first place, in your opinion?

**Mr. Gilles Bisson:** Careful; anything you say will be used by your colleagues.

**Ms. Pat Vanini:** I’ll start if you want.

**Mr. Russ Powers:** Yes, why don’t you start, Pat?

**Ms. Pat Vanini:** Part of this is that you’re asking us to make an opinion on something we really—I’ll be honest: I couldn’t even tell you what the RFP process looked like for those. Those are pretty local issues. Without putting you on the spot, Steve, we have a relatively small staff. I think we have about seven policy people trying to keep up with about 17 ministries that work with municipal governments, so for some of that day-to-day stuff, we just don’t have the resources. It’s probably not in our wheelhouse to comment on those local things. I think it’s really difficult.

In any community, there’s probably some activity that the public doesn’t want or that doesn’t fit with those local ambitions. I think the challenge is, how do you make that

stuff happen in a way—and it may not be the right location; it may be a different location. But I do think that, as we have said, people need to understand what all of the ramifications of all of the decisions and options are. I think that may have been a piece—I don’t know—in the RFP that might have been lacking, and those things do catch up and get a little messy.

**Mr. Russ Powers:** And one of the things that we conveyed in the most recent consultation that’s coming out with regard to the siting of large energy plants is the issue of what I’m going to call local veto ability vis-à-vis the big picture in that. We were very pleased that, certainly in the discussion documents before here, the issue of regional impact, as I’m going to call it, will be taken into consideration. I think we’re of like mind that the ability of a municipality to stop a project that would benefit a particular area causes some angst for all of us, but, where possible, the right of unwilling hosts should be considered and have somewhat of a higher priority.

**Mr. Steve Clark:** Fair enough. Chair, through you: I’m glad you talked about your staff, because I think there’s a perception out there that if you represent 444 municipalities, at the drop of a hat you’re going to be able to roll out a policy statement on every little issue that you deal with. I appreciate the fact that that was one of the reasons why you wanted an MOU: so that you could actually sit down and have that meaningful discussion over a long period of time.

I have to tell you, though, that when I look at the case of Mississauga and Oakville, it was two years for one municipality and seven years for the other, before the government made those changes. I’d just like to hear some of your comments about the new process, how you see AMO’s role in there, and maybe even comment about the fact that when you have a local community that gives that opinion, certainly you must agree that a seven-year response time is not acceptable.

**Mr. Russ Powers:** Well, one of the things that we’ve asked for very clearly in our advice to the committee, and it’s enunciated somewhere in the document, is not only the transparency but the accountability component of it and also the timeliness of the decisions. A decision, after taking due consideration, should be rendered in a timely manner.

I can’t comment on the reasons for the time period that it took to do it. In a lot of cases and in a lot of issues, it’s important for municipalities for a decision to be made in a timely manner, because they need to get on with their lives, and if there is a decision that will impact the way that business is carried on, that business in the big sense is carried on, they need to know sooner rather than later. Whether it’s changes in infrastructure or whether it’s changes in the provision of education, all those things will be impacted by the decision.

**Mr. Steve Clark:** Chair, just further: I appreciate the fact that so many of the comments that the government wanted you to debate would be siting and some of the other practices moving forward. I understand that. I think the bigger picture is the whole decision that was made



around the decision to stop those plants from moving forward, the fact that it cost taxpayers hundreds of millions of dollars, and it was a political decision, as we've heard time and time again.

I did warn you that we were going to invoke some of the same questions that we have invoked to other deputants, so I would like you to address the following question: Do you know the cost to cancel the two gas plants?

**Mr. Russ Powers:** The answer is no, we do not.

**Mr. Steve Clark:** And do you know who ordered the emails about the gas plants to be deleted and held from members of provincial Parliament investigating the abuse of taxpayers' dollars?

**Mr. Russ Powers:** We do not.

**Mr. Grant Crack:** Chair, I have nothing further.

**The Chair (Mr. Shafiq Qaadri):** Thank you.

Mr. Tabuns, 20 minutes—oh, Monsieur Bisson.

**Mr. Gilles Bisson:** Thank you.

Was it you who decided not to release the documents to the estimates committee? Come clean. Tell us, was it you? Were you in any way involved in refusing to release the documents to the estimates committee?

**Mr. Russ Powers:** No, sir.

**Mr. Gilles Bisson:** Have a great day.

**The Chair (Mr. Shafiq Qaadri):** Merci, Monsieur Bisson.

To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Chair, I find it absolutely incredible that part of the mandate of this committee, which is to get advice on the siting of energy infrastructure, both opposition parties decided to pass on. I guess they're much more interested in a paper chase of whether or not every staff member kept every email. But, anyway, let's go back to what we're here for.

*Interjections.*

**Mr. Gilles Bisson:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson.

**Mr. Gilles Bisson:** We're interested in the government actually doing what a legislative committee told it to do. That's what we're interested in.

**The Chair (Mr. Shafiq Qaadri):** I thank you for your interest, Mr. Bisson. That's not really a point of order.

Mr. Delaney.

*Interjections.*

**Mr. Bob Delaney:** Okay. So let's go back to what the committee is actually here to do, which is to talk about improving the process of siting of energy infrastructure. As I mentioned earlier, we've had about 50 witnesses come before this committee, and we've had some feedback from some of them.

One of the first recommendations in the report from the Independent Electricity System Operator and the Ontario Power Authority is, "Strengthen the processes for early and sustained engagement"—I'm using their words exactly—"with local governments and the public," which is a point you touched on earlier. Another recommendation was, "Provide local governments and com-

munities with greater voice and responsibility in planning and siting."

Could you go into a few more specifics on how we might strengthen our engagements, on the one hand with local governments and on the other with specific groups and members of the community, and talk a little bit about what steps need to be taken to ensure that these local voices are heard?

1720

**Mr. Russ Powers:** Why don't I have Ms. Vanini start with this—

**Mr. Bob Delaney:** Perfect.

**Mr. Russ Powers:** —and then I'll be happy to join in certainly from my local perspective as it would impact municipalities that I'm aware of.

**Ms. Pat Vanini:** As I read the report from the OPA and IESO to the minister, and some of the other activities going on, it's been a really busy summer in terms of everything energy, it seemed, from long-range planning to regional planning to municipal planning to energy conservation etc. I think that the trick here is going to be, How do all these things come together? The public is confused by all these different activities and, then, how do they relate to them?

I also believe that—I guess it goes back to a point that was made earlier around Dr. Alan Levy's comments about earlier education. I think everyone—not just schoolchildren—need to have a better understanding of what energy consumption needs are.

AMO did some work many years ago when we found out how much energy municipal governments themselves were consuming, by virtue of the services that we do, from the housing that we have to deliver to all the infrastructure and water treatment.

There are a lot of things that need to be done on all fronts, but the real trick is going to be how it all comes together, and how it comes together and makes sense for citizens in communities, because there is really only one taxpayer. They need to understand what the costs of certain things might be or what the other alternative choices are. That has to be part of the conversation.

In terms of how to play this out, my advice would be, I think the report to the minister sets out a good framework, but what we need now is more on how to implement it, how to make it real, how to put it into action. It sets out a reasonably good framework, but it needs that next level. But until you get the buy-in on the first part, that second part sort of comes. Is that the tail on the end of the dog?

**Mr. Russ Powers:** The other thing is that no comment should be taken as petty. In my municipality, when we do distribution under planning, no matter what it is, it finds its way not only to the impacted neighbours—it goes beyond that, but it has a distribution to 38 agencies with regard to their comments. A "no comment" is just a confirmation that they've taken a look at it and they say, "We don't have any objection to it," or "We would add these comments to the consideration." One of the things is optimizing the distribution and allowing for—I'm

going to call—an appropriate time, and go back to my comment on the municipal process as prescribed under the Planning Act and other pieces of legislation prescribe a time period in order to be taking place, along with the abilities for appeals and that. Something too prompt may result in a decision that's not appropriate for the situation.

**Mr. Bob Delaney:** Thank you. I think Ms. Albanese will ask the next—

**The Chair (Mr. Shafiq Qaadri):** Ms. Albanese.

**Mrs. Laura Albanese:** I wanted—

*Interjection.*

**Mrs. Laura Albanese:** Sorry?

**Mr. Gilles Bisson:** Would you like to have my 20 minutes?

**Mrs. Laura Albanese:** No. I think I will be fine with the time that I have. Thank you.

**Mr. Gilles Bisson:** Okay.

**Mrs. Laura Albanese:** But thank you for being so generous.

One of the other witnesses we had before this committee, George Vegh, said that he thinks that municipalities have the necessary resources and expertise to make complex decisions, and he mentioned that there are energy agencies that could be sources of information for municipalities. He said, “The key role of the agency should be to provide clear information on the trade-offs that would have to be made, and municipalities should be able to absorb that information and act on it.”

I'm wondering what your thoughts are on that recommendation. Do you see energy agencies playing a role in ensuring the municipalities have the necessary information to make complex energy decisions?

**Mr. Russ Powers:** Any information, I think, can assist in coming towards the most appropriate decision, but sometimes, and more often than not, the purveyors of the information may very well have a vested interest. Doing the outreach to gather the information that will assist in the consideration of the issues—whether it's the siting of a location of a particular thing or a particular type of energy resource—requires the appropriate consultation, and all the agencies and that should be requested to provide information so that balanced consideration can take place.

The statement made that municipalities have the ability in order to do that, in my opinion, is not correct. Our municipalities go from the smallest hamlets up to the largest of the cities, and this was most recently proven with a move towards a development of an asset management plan to assist municipalities to determine what the critical needs of their municipalities are and to prioritize the needs on those particular—you know, funding and the ability to move ahead. What the analysis has determined is that the municipalities don't have the capacity. They neither have the capacity nor the resources nor the expertise, in a lot of cases—in too many cases. I believe it was 352 out of 445 municipalities that do not have the capacity or the ability in order to do the critical analysis

that would provide for a complete and meaningful decision.

**Mrs. Laura Albanese:** And to improve that situation, are there any regulations, any legislation that needs to be amended to improve that? Have you given any thought to that?

**Ms. Pat Vanini:** I'd want some time to think about that. As I said, there's a lot of legislation and regulation now.

I think part of the challenge is that this is a specialty business, energy, whether it's nuclear, solar, wind etc. It's really driven by technology, and the technology changes. I'm no expert on it, but I would think in this industry it's probably been at lightning speed. So I think municipal governments, in terms of the councils and their ability to assimilate information and understand it, ask good questions and know when they get good answers, those type of things—but I think certainly there needs to be access: Whether it's science or technology, are there certain technologies that have different kinds of risks to them? What would be a public safety piece? I think there needs to be an access somehow to that, and I think that's certainly been part of the challenge, even with the wind turbines. There are a lot of small, rural places that didn't feel they had the expertise to manage and ask the questions and know what safeguards they might need to put in. I think that's where, certainly, the policy development as well as the implementation, the program development, really needs to come together. Sometimes we're much better on the former than the latter.

**Mrs. Laura Albanese:** I want to thank you so much for your time.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mrs. Albanese. To you, Mr. Clark: 10 minutes.

**Mr. Steve Clark:** I'm fine, Chair. Thank you for the opportunity.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Clark.

Je passe la parole à M. Bisson.

**M. Gilles Bisson:** Monsieur le Président, on n'a aucune question ici.

**The Chair (Mr. Shafiq Qaadri):** Merci beaucoup.

Thank you, Ms. Vanini and Mr. Powers, for your presence and your deputation.

There are some orders of business with the committee—

**Mr. John Yakabuski:** We would like to request a 10-minute recess, please, Chair.

**The Chair (Mr. Shafiq Qaadri):** Fair enough: a few minutes' recess. I know we're waiting for Mr. Fedeli.

*The committee recessed from 1728 to 1730.*

## SUBCOMMITTEE REPORT

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. Yes, recess is cancelled. I would invite our Clerk to speed up, if necessary.

We have a subcommittee report. This needs, I presume, to be read into the record?



**Mr. Gilles Bisson:** I have a motion.

**The Chair (Mr. Shafiq Qaadri):** Monsieur Bisson.

**Mr. Gilles Bisson:** Yes, I have a motion. I want to move—

**The Chair (Mr. Shafiq Qaadri):** Yes, we have a subcommittee report that's going to be entered.

**Mr. Gilles Bisson:** Oh, I thought I heard you were going into subcommittee. Sorry.

**The Chair (Mr. Shafiq Qaadri):** No, no.

**Mr. Gilles Bisson:** Okay, I misunderstood.

**The Chair (Mr. Shafiq Qaadri):** Would anyone care to read the subcommittee report? Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you, Mr. Chair. Your subcommittee on committee business met on Tuesday, August 27, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013, and recommends the following:

(1) That the Clerk of the Committee request that the confidential documents received from Cabinet Office on May 7, 2013, in response to the committee's April 23, 2013, motion and the confidential documents received on May 21, 2013, in response to the committee's May 7, 2013, motion:

1. have all personal information redacted by the responder;

2. have all commercially sensitive material which is not related to the gas plants redacted by the responder; and

3. have the responder resubmit the redacted documents to the committee.

(2) That the Clerk of the Committee return the confidential documents received from the Premier's office on May 21, 2013, in response to the committee's May 7, 2013, motion and ensure that the documents are not released or form any part of the committee's public record.

(3) That the Clerk of the Committee invite a representative from the Ontario Power Authority to attend an in camera meeting of the subcommittee to provide an explanation regarding the confidential nature of the documents received in response to the committee's May 14, 2013, motion.

(4) That the Clerk of the Committee request that the confidential documents received from the Ministry of Finance in response to the committee's May 14, 2013, motion:

1. have all personal information redacted by the responder;

2. have all commercially sensitive material which is not related to the gas plants redacted by the responder; and

3. have the responder resubmit the redacted documents to the committee.

**The Chair (Mr. Shafiq Qaadri):** Thank you.

*Interjections.*

**Mr. John Yakabuski:** No, not done.

(5) That the Clerk of the Committee return the confidential documents received from the Ministry of Government Services on July 22, 2013, in response to the committee's June 25, 2013, motion and ensure that the

documents are not released or form any part of the committee's public record.

(6) That the Clerk of the Committee return the confidential documents received from the Ministry of Government Services on July 26, 2013, in response to the committee's June 25, 2013, motion and ensure that the documents are not released or form any part of the committee's public record.

(7) That the Clerk of the Committee sends a letter to Dave Douglas requesting clarification on the confidential documents received from the Ministry of Government Services on July 26, 2013.

(8) That the Clerk of the Committee request that the confidential documents received from the Ministry of Government Services on August 15, 2013, in response to the committee's June 25, 2013, motion:

1. have all personal information redacted by the responder;

2. have all commercially sensitive material which is not related to the gas plants redacted by the responder; and

3. have the responder resubmit the redacted documents to the committee.

I move that the subcommittee report be adopted.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. Any comments before we do that? All in favour of adoption, as read? Any opposed? Carried. Thank you.

## COMMITTEE BUSINESS

**The Chair (Mr. Shafiq Qaadri):** We now have a motion from Mr. Tabuns of August 27.

**Mr. Peter Tabuns:** Which I would like to hold down until our next regularly scheduled meeting, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you for holding down the motion without protest, Mr. Tabuns.

We now have a new motion: Monsieur Bisson.

**Mr. Gilles Bisson:** I move that the Standing Committee on Justice Policy meet, when the Legislature is in session, to review the matter of the Speaker's finding of a prima facie case of privilege with respect to the production of documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants, as follows:

(1) one witness slot on Tuesday mornings, starting at 8:30 a.m.

(2) one witness slot on Tuesday afternoons, starting at 3 p.m.

(3) one witness slot on Thursday mornings, starting at 8:30 a.m.

That each caucus is allotted one witness per week with the same rotation;

That each witness is allotted a total of 95 minutes, including a five-minute opening statement, with the same rotation for questions;

That the new meeting schedule will be effective starting Thursday, September 19, 2013.

**The Chair (Mr. Shafiq Qaadri):** All right. So just to be clear, the effect of this particular motion is that on Tuesday afternoons, instead of hearing two witnesses starting at 3 p.m., it will be one witness. It also will remedy the math that seemed to be offending M. Bisson.

**Mr. Gilles Bisson:** There's a little error here that was just caught by my colleague. It should also say "Minister of Energy, Ministry of Energy and the Ontario Power Authority." Sorry; that somehow was left out.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. We'll need that in writing, by the way, but that's fine.

Are there any issues on this particular motion before we vote? If not, all in favour of the motion, as read? All opposed? Motion is carried.

If there is no further business—yes, Mr. Fedeli?

**Mr. Victor Fedeli:** Chair, I might have been out of the room when we discussed the plowing match.

**The Chair (Mr. Shafiq Qaadri):** Yes. There is no committee on Tuesday next week.

**Mr. Victor Fedeli:** There's no committee on the 17th. Yes, I understand that.

**The Chair (Mr. Shafiq Qaadri):** It will be Thursday, September—

**Mr. Bob Delaney:** There's actually a proposal to have a float on which we could have a committee meeting.

**The Chair (Mr. Shafiq Qaadri):** That's not in order, thankfully.

**Mr. Victor Fedeli:** I know how it could be powered.

**The Chair (Mr. Shafiq Qaadri):** The committee is now adjourned, colleagues.

*The committee adjourned at 1736.*











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## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 24 September 2013

# Journal des débats (Hansard)

Mardi 24 septembre 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

Privilèges des députés



Chair: Shafiq Qaadri  
Clerk: Tamara Pomanski

Président : Shafiq Qaadri  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 24 September 2013

Mardi 24 septembre 2013

*The committee met at 0830 in committee room 2.*

## MEMBERS' PRIVILEGES

## MOWAT CENTRE

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I respectfully call the Standing Committee on Justice Policy to order. I invite Mr. Carlson and Ms. Richardson to please come forward and to be affirmed. Before we begin their opening statement, just a couple of procedural questions from Mr. Fedeli. Please be seated, join us, and be affirmed by the Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** We'll do Mr. Carlson first. Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Richard Carlson:** I do.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Ms. Richardson, do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Ms. Mary Ellen Richardson:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you for your presence and representation on behalf of the Mowat Centre.

Before I offer you the opening five minutes, we just have some procedural issues. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. I'm going by memory—a pretty good memory on that. Were we owed some documents on September 18, last Thursday?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Check your package. Sometimes we've had a lot of letters and stuff that were saying, "We're getting back to you." From where? Do you know what organization—

**Mr. Victor Fedeli:** It was the major amount of documents from the Ministry of Finance and the OPA. This is the bulk of the documents—

**The Clerk of the Committee (Ms. Tamara Poman-ski):** We received OPA documents; they're actually in there.

**Mr. Victor Fedeli:** In here?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Actually, the OPA had given confidential/non-confidential, so we're going to talk about that.

**Mr. Victor Fedeli:** And what about the Ministry of Energy?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** I think there was a letter in there with a status update, if you open up all the packages.

**Mr. Victor Fedeli:** Just a moment, then, Chair, please.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** There's a letter from September 10 from the Ministry of Energy.

**Mr. Victor Fedeli:** So the documents were due on the 12th; we received a letter on the 12th that said we're going to receive another letter on the 27th, but no documents.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Right; they'll be reporting back. Yes, that's all I've received.

**Mr. Victor Fedeli:** But I don't find that to be satisfactory. They were due on the 12th.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** We can get committee agreement to write a letter or—

**Mr. Victor Fedeli:** Well, I think we're going to have to. All they've committed so far is, they're going to send us another letter on the 27th, not the documents. This was asked for back on—

*Interjection.*

**Mr. Victor Fedeli:** Yes, the letter on the 12th says we're going to get another letter on the 27th. A month will have gone by and all we're going to get from them is a second letter, not our documents.

**Mr. John Yakabuski:** A month goes by and we get to be pen pals.

**The Chair (Mr. Shafiq Qaadri):** All right, why don't we begin the witnesses, and we'll let you prepare a motion to that effect.

Mr. Carlson, Ms. Richardson, you have your introductory five minutes beginning now. Please begin.

**Mr. Richard Carlson:** Thank you, Chair, and thank you to the committee for allowing the Mowat Centre to contribute to deliberations.

As a brief opening statement, I would like to review Mowat Energy's recent research on energy planning, which can be found in the report *Getting the Green Light: The Path to Public Support for Ontario's Power Plans*.

We have provided copies for you, and it is available on the Mowat Centre's website as well.

Clearly, there have been challenges and controversies in recent years in siting generation facilities. In large measure, these problems have prompted this committee process. We believe that this problem is a symptom of a larger systemic problem and experienced by successive governments due to a lack of transparency, accountability and public engagement in energy planning.

We cannot speak to specific siting issues; rather, our research is focused on how to address a larger problem, that of achieving social licence for Ontario's energy plans and drawing from the best practices from other jurisdictions and other sectors.

Our report identifies 10 principles centred on transparency, accountability and public engagement that, if incorporated into the planning process, would lead to greater social licence for long-term energy plans, including for the siting of energy infrastructure. Ontario and five other jurisdictions—New South Wales, British Columbia, Great Britain, New York state and Sweden—as well as an example from outside the energy industry, Ontario's Metrolinx, are then measured against these principles and best practices identified.

Compared to Ontario, the other jurisdictions we've studied incorporate greater democratic review and accountability in planning and are able to secure greater social licence for long-term plans. Our conclusion from this is that public input and democratic engagement need to be strengthened in Ontario. This could happen in two ways: through enhanced clarity around the role of the actors in the sector, and through more meaningful public consultation and public advocacy.

Our report makes 12 recommendations related to all energy planning in Ontario. In relation to the discussion here, we recommend the following: first, the creation of a community participation charter that sets out the process for community and public engagement, as well as the extent and bounds of authority of the various actors involved in planning; second, increasing the role of the OEB to include reviewing applications for new generation in addition to their current role of reviewing transmission and distribution projects; and third, increasing the importance of regional and community energy plans.

For the most part, our recommendations involve getting the public and the community involved throughout the entire energy planning process, from deciding on energy objectives to detailed energy plans and the siting of new infrastructure. This will need to look at all forms of energy, such as heat, and not just electricity.

Involving communities and the public will require a major change from the centrally planned system we currently have. There will be a need to balance the necessity for local involvement with the accountability for the decisions and their outcomes; namely, a reliable electricity supply and the cost of obtaining it. All energy systems involve trade-offs. It is not sufficient to reject all options. With the power to make decisions comes the responsibility to make good decisions. To do this mean-

ingfully, it is important for regions and communities to consider the local energy requirements, to have access to the information needed to understand their options, and, finally, to plan accordingly.

What we have heard from numerous sources is that we have enough supply for the immediate future. That is why we're recommending a moratorium on building further generation capacity until these planning systems are complete.

We are pleased to answer any questions that you may have on these matters. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Carlson, for your opening address. I'll begin with the government side. Mr. Delaney, 20 minutes.

**Mr. Bob Delaney:** Thank you very much, Chair. Good morning, and thank you both for being here.

As I'm sure you know, a large part of the mandate of this committee is going to be to provide recommendations to the Legislature on how we can improve the siting process for large-scale energy projects. We've asked you here today as co-authors of the recent report that you've mentioned from the Mowat Centre entitled *Getting the Green Light: The Path to Public Support for Ontario's Power Plans*.

During the past several months, you've been researching and considering many of the same issues that this committee is also exploring. I know our committee could learn a lot about the research process that went into producing your report and into formulating its conclusions.

Just before we get into it, both of you have career and research experience in the energy field. Would each of you tell us just a little bit about your history in the energy sector?

**Mr. Richard Carlson:** A lot of my experience in the energy sector is in Europe and North Africa. For the last five years—sorry, four and a half years—I worked in London for a consultancy advising on investment projects in energy in Europe, North Africa and the Middle East, primarily in renewable energy, but I also worked on gas power projects as well.

I have since moved back to Ontario, and I've worked on projects in North America. Now I work for the Mowat Centre, researching energy policy.

**Ms. Mary Ellen Richardson:** My experience in the energy sector is approximately 30 years, primarily in Canada, starting in the oil patch in the west and moving east, working in the natural gas sector, and then, for the last 15 years or so, in the electricity sector. I have worked for two associations. I was the president of the Association of Major Power Consumers in Ontario and I was the president of the Canadian District Energy Association.

My experience in the last five years has been working in Canada and in northern Europe, in the community energy field, primarily. I am currently doing work in Nova Scotia, advising them on policies related to energy.

**Mr. Bob Delaney:** Okay. Thank you. Could you talk a little bit more about the Mowat Centre and, in particular,



the energy hub? What are its objectives? What are some of the principles that underlie the work that's done?

0840

**Mr. Richard Carlson:** The Mowat Centre is a public policy think tank, centred at the University of Toronto. Mowat Energy is a separate unit within the Mowat Centre itself. We look at the systemic problems that are facing the energy sector in Ontario and in Canada. Most of our work revolves around researching public policy objectives in energy and making recommendations. We've also organized conferences in order to share information.

**Mr. Bob Delaney:** Thanks. I think it's critical for governments to receive this kind of outside perspective from non-partisan organizations like the Mowat Centre.

What kind of research went into preparing your report?

**Mr. Richard Carlson:** The research involved two levels. First, we did a literature review of energy planning, and we also talked to actors within Ontario and internationally on identifying the best principles for energy planning. Then, in discussion of the principles, we also identified the six jurisdictions I mentioned, including Metrolinx, and for that, we interviewed people in all those jurisdictions to identify the best practices, how they go about it. We then related the practices that they do to our principles and identified the actions that adhere to our principles.

The second part was looking at the situation in Ontario. One of the main aims of the Mowat Centre and Mowat Energy is that we try to have actionable recommendations. We fit our recommendations into the current environment so that they can improve the situation and will meet the current institutional framework that we have.

**Mr. Bob Delaney:** Perhaps, then, you could speak in just a bit more detail about what experts you worked with and how their input contributed to the final report.

**Mr. Richard Carlson:** The list of the people we interviewed is available in our report, in one of the appendices at the end. I believe it's appendix I. I've got to double-check that.

We first identified actors within Ontario. From there, we moved out and also got recommendations from people as to who we should talk to. Some of them were with public organizations, ministries of energy, in various areas, as well as external consultants. A lot of those were the ones who were recommended who have experience working in that particular jurisdiction. In particular, we're looking at people who have had experience building new infrastructure and in working in that jurisdiction.

**Mr. Bob Delaney:** Let's move to the underlying theme in your report, which is the role of the public. I'll quote from the opening line in the executive summary: "For decades Ontario has struggled to gain public support for some aspects of electricity policies and plans. Too often, longer-term plans are battered by short-term controversies. These controversies, experienced by successive governments, arise from shortcomings in Ontario's

planning process, most notably a lack of clarity around the role of the public."

I found this quote very interesting in light of the work this committee has undertaken. Could you talk in a little more detail about how that sentiment guided the work that went into the report?

**Ms. Mary Ellen Richardson:** We believe that good decisions come from democratic decision-making processes and that those require the involvement of a large number of stakeholders, including the public. Drawing from, again, best practices in other jurisdictions, what we found was that this kind of consultation took place all along what we call the continuum between policy-making and ending with the actions that arise from plans. So the consultations with the public took place all the way along that continuum.

Good consultation requires access to good decision-making information, so one of our recommendations also goes to the creation of an information repository that people can access to better understand the energy situation and energy choices.

**Mr. Richard Carlson:** If I can just add something, I think it's important that we should look—if you're going to do any large, long-term plan, especially a large infrastructure plan, you need to have social licence. These are long-term plans. You need to have the public agree that this is the direction you want to go in, or if not agree, at least accept that it is the most acceptable direction that we should go in of all the other options.

Every system involves trade-offs. You always have to look at what can be done, what the costs are of doing it, and what people want. That is important to bring the public into that, because they're the ones, in the end, who are going to be paying for it. So it's important that they form part of that conversation.

Without the social licence—I believe that for the last couple of decades in Ontario, it has been somewhat lacking—you are going to continue to have controversies about energy plans in general, overall, as well as in specifics such as the infrastructure siting. So along the whole continuum, there will continue to be controversies.

**Mr. Bob Delaney:** Okay. Let's take the report's recommendations, then, that are grouped into four themes. Let's begin with the theme of public engagement, as that topic has consistently been at the forefront of our committee's efforts to improve the siting process of energy infrastructure in Ontario.

Could you talk about some of the specific recommendations that you provided to strengthen public engagement in Ontario?

**Mr. Richard Carlson:** We had two major recommendations in that. The first one was to legislate a community participation charter. One of the problems when we're talking to people involved in the sector, in terms of public engagement consultation, both at the policy and government end and all the way down to the siting, is that it tends to be erratic. Some developers have very good public engagement processes and do very good



public engagement; others, not so much, and sometimes it's the same developer but different projects.

There needs to be some set of descriptive guidelines, at least, that will help guide developers in knowing what the goals are. What are the expectations of public engagement? What is the public allowed to do? What are they allowed to do?

This would also reduce the problem of people not knowing when they can intervene in a process as well, which is a problem. For example, if someone is developing an infrastructure, they don't know when they are supposed to intervene. When are their opinions accepted? This would be a framework to inform everybody of the process around it, so that it is clear to both the public as well as to the project proponents. It would also clarify the roles of the actors, including the government ministries as well, that are involved in this—for example, for the environmental assessment.

The second recommendation we looked at was to create a public energy consumer advocate. I believe this is very important if we're going to be looking at securing social licence. The consumers have to have some form of advocacy so they will be able to be informed about what is happening in the energy sector as a whole, as well as to ensure that their rights are being upheld by the various actors. Thus, they know that there is someone who will represent them in the various institutional fora in energy, and that it is open and clear for everybody.

**Mr. Bob Delaney:** Okay. Our government has said that we want communities to be more engaged early in the process with regard to the siting of energy infrastructure. How do you think the various parties in energy infrastructure decisions can more effectively engage local communities on siting decisions? For example, are public consultations enough, or would you recommend more ways to reach out to communities affected by energy infrastructure?

**Ms. Mary Ellen Richardson:** We see a larger role for municipalities and local authorities in energy planning matters. This, again, is consistent with experience in other jurisdictions where the local authorities are much more involved in energy planning.

One of our recommendations in that regard calls for embedding energy planning responsibility in the provincial planning statement. Just as other essential municipal infrastructure must be considered in community planning, so also we think that energy should be considered in community planning, and that structure, we believe, includes public outreach and stakeholder engagement and community engagement within that structure, if you will. We believe that that will give the communities much more say in decisions that affect them and in finding energy solutions that meet their local community needs.

0850

**Mr. Richard Carlson:** I'll just add to that. I believe that public consultation is an important element, but at the moment there is a lack of information available for people to even be able to begin to make effective decisions. If people do not have the information, they cannot

make good decisions. You need that element. One of the roles of communities would be to present that information. That could be one role for them, for example, or the consumer advocate or the government or however it is worked out. But the information needs to be shared so that people can actually make good decisions, and to start them in the conversation early so that we can decide what is needed and what is desired. There are many ways of solving people's energy needs, and each involves different trade-offs. I believe that if people are involved in that discussion, there will be an acceptance of the trade-offs and therefore of the plan in general, which would lead later on to fewer problems in the energy infrastructure. The engagement really needs to begin very early, during the policy stages at the government, right down to the community planning stages as well.

**Mr. Bob Delaney:** Okay. You have a set of recommendations that fall under the theme of good governance, in which you outline a number of recommendations to ensure that citizens feel confident that energy plans are both prudent and effective for the province. Could you expand on what steps need to be taken to strengthen governance on this issue?

**Mr. Richard Carlson:** We've looked at four different steps. One was to define the roles of ministers and elected officials and limit the use of ministerial directives. If there is going to be a long-term plan that has social licence, then it has to be a long-term plan. It has to be somewhat set for the future and it cannot be changed depending on various issues. That, I believe, is quite important, and I think that's been echoed by many people here.

The other one is to make sure that the energy plan is prepared by an independent expert agency. Once the government sets the policy as to what energy in Ontario is going to look like, then it is very much up to the expert agencies in order to see how that can be realized. That plan should also be checked to make sure that it is in the best interests of consumers and Ontarians. We recommend that that be checked, as in the current legislation, through the Ontario Energy Board, which has the ability to review these plans, and to look at the economic effectiveness and to ensure that it meets the government's policies. Also, in addition to that, for the procurement plans and the leave-to-construct applications for new infrastructure—that they are also reviewed by the OEB and the options are looked into, so that a cost-benefit analysis of the different options is presented throughout the entire spectrum and these are then checked to make sure that the option being presented, say for infrastructure, is the most cost-effective plan possible, and that the other solutions are not as cost-effective or do not meet the requirements for sustainability or for what the community wants. So there are different aspects of looking at that.

**Ms. Mary Ellen Richardson:** Just to add, the elements of good governance we thought of were clarity of role, transparency of process and access to consultation.



Each of those elements that Richard discussed include those three goals, if you will; those three objectives.

**Mr. Richard Carlson:** I believe it's important—the model we present is one possible model and is based upon what we see in the Ontario energy sector. Other models are available, but the key point is that it meets the principles that we identified. These could be organized in different ways, but the most important part is that the principles are met in terms of planning, as opposed to the exact model. We believe that this model does meet the principles, which is why we recommended it.

**Mr. Bob Delaney:** Let's move to your next theme, which is integration. Your report recommends that local and regional plans, goals and concerns should be better integrated. One recommendation you have is that municipalities should include energy planning in their infrastructure plans. What other steps should the provincial and municipal governments be taking to work more collaboratively on energy planning in the future?

**Ms. Mary Ellen Richardson:** Well, I think that there is an opportunity to better integrate the plans at the various levels. We acknowledge that there is provincial-level planning for the major grid elements of the electricity system, but there are also opportunities for regional and, indeed, community energy planning. What we have recommended is that there be better integration between those three levels of planning, which requires an information-sharing between the three levels and then finding solutions that integrate those three things and meet the goals of each level. I would say that, in energy, we have to do a far better job at integrating community needs, regional needs and provincial needs, and I would say that this is the time to do it, given our electricity—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. Mary Ellen Richardson:**—supply situation. We have the opportunity to better integrate those three levels of plans.

**Mr. Bob Delaney:** Anything else you want to add on that topic?

**Mr. Richard Carlson:** I think it's important to look at it as a continuum, so that community plans and community needs can then inform regional needs, which then inform provincial needs, but, at the same time, provincial policies inform regional plans, which also inform community plans. They go both ways, so that there is a conversation going on throughout the entire process.

**Ms. Mary Ellen Richardson:** I think the other thing we should add and note is that, in other jurisdictions in particular, when issues related to energy planning are being considered, it's a much broader definition of "energy" beyond just electricity. They are also considering the thermal energy needs of communities, the energy needed to heat and cool buildings, and that's a very significant part, in particular, of community energy needs.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

To the PC side: Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Chair. Thank you very much, Ms. Richardson and Mr. Carlson,

for joining us this morning. I appreciate the efforts you've made in this report, but it's not your first rodeo either; I can see that you've done a number of reports. I also appreciate the interviewees and the credentials that they have and their contributions to this report, as well.

It's interesting—maybe it would have been nice to have this report several years ago; we might not be here today. But it's somewhat rich to listen to my colleague on the other side, Mr. Delaney, on how consultative they believe they've become, the members of the government, and that they're really interested in public input now and how that could have led to better siting of energy projects.

The projects that we're talking about in Oakville and Mississauga—that's why this committee is here: the gas plant cancellation scandal perpetrated by the Liberal government. The history goes way back, and I'm sure you're familiar with it. All of the problems existed at the time of the decisions to locate those plants on those specific locations. Nothing changed from the point of view of the problems inherent to the location, and nothing changed with regard to the community support for those projects. There was no community support from the start, and that continued to be the problem in the end.

The decisions to locate those plants—if you were going back in time, could you possibly have supported those decisions given your process for siting large-scale power projects?

**Mr. Richard Carlson:** There are a lot of examples that we can use from the energy sector of not consulting at any earlier stage. The case in point is one example, but we are looking at the systemic problem that has been faced by successive governments over many years, and how we can move forward and solve this problem so that there is less likelihood of any controversies in the future.

0900

**Mr. John Yakabuski:** I understand that. Would you have sited these projects on those locations?

**Mr. Richard Carlson:** Without knowing the full details of the power plants, it's very difficult to know. I don't have the information to be able to answer that.

**Mr. John Yakabuski:** Well, I think you know some of them. You and Ms. Richardson worked at the OPA, so I think she knows some of them as well.

This was a bad decision, was it not? I mean, I think you're confident enough in your credentials to give us that answer: yes or no.

**Mr. Richard Carlson:** The decision would not have met the principles that we identified.

**Mr. John Yakabuski:** Thank you very much. Now, I see all these recommendations, and I think they're really well thought out. It goes through many of these different projects.

"The planning process" is "based on public policy objectives which have been broadly debated and democratically accepted." I think we have to give them a fail in that regard.

"The planning process has to be integrative." I think we have to give them a fail.



“The planning process has to include a clear economic analysis.”

I want to go on to another, because we’re talking about all power projects in the province of Ontario now, past, present and future.

The member opposite talks about integration and integrating the public and involving the public in the process, and that’s a key component of your recommendations here. We’ve got now a government that has built roughly 2,000 megawatts of wind power in this province, in most cases against the will of the communities. They’re planning to build at least another 3,000 or 4,000 more megawatts. We’re already in a position where we’ve now started paying wind developers not to produce the power because it’s (a) not needed, and (b) the wind doesn’t operate at the proper time, but they signed on with these exorbitant contracts guaranteeing ridiculous prices for wind power—

**Mr. Bob Delaney:** Chair, on a point of order.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney on a point of order.

**Mr. Bob Delaney:** We are here to discuss the issues in our committee mandate—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. I think given the Mowat Centre’s energy expertise—plus, by the way, I remind you respectfully that it is a government witness—I think the questions are quite in order. Go ahead.

**Mr. John Yakabuski:** Thank you very much, Chair. They brought the witness in. I think they can—as Jack McCoy would say on Law and Order, “You opened the door, counsellor.”

Now we’ve got these massive wind projects that have been proven to fail miserably, if you want to do your economic analysis. Yet the government is insistent on going ahead and continuing to perpetrate this failed source of energy, building something that is not needed and is not cost-effective and is opposed vehemently. We have resolutions by scores of municipalities, saying they do not want, under any circumstances, these wind developments in their communities.

Would you agree, then, that their plan for large-scale wind development in the province of Ontario would fail miserably in getting the green light, from your report?

**Mr. Richard Carlson:** Well, I really can’t just talk about any one particular element of Ontario’s energy plan.

What we recommend, and what we are discussing, is that there is an engagement with the process and a cost-benefit analysis of what is going on. The cost-benefit analysis is not just strictly economics. There could perhaps have been other issues in play.

But at the same point, there needs to be a public discussion over this. This is not just one issue that we can say has only come up in the last recent years. It has faced successive governments over many decades, from way back, from when, in 1998, Ontario Hydro was broken up and partially privatized. You could even say, since then, that there has been a lack of public engagement and

social licence in Ontario’s power plans. So this is a decades-long problem as opposed to—

**Mr. John Yakabuski:** I’m asking you specifically for the green power scheme of this government: windmills across the province of Ontario, the Green Energy Act. I really want to stick specifically to that.

Now, you say there are more things to a cost-benefit analysis, but I didn’t ask about a cost-benefit analysis; I asked about an economic analysis. The economic analysis for wind power simply isn’t there.

**Mr. Richard Carlson:** I’m not an economist, and it would be very difficult for me to answer that.

**Mr. John Yakabuski:** You’ve done a lot of research, though. I see your list of papers. You’ve done a lot of research, and you’ve got people in your list of interviewees who are actually economists.

**Ms. Mary Ellen Richardson:** We didn’t address that specific question with them, and we haven’t got the data to do the assessment of economics of a particular generation source. It simply wasn’t the focus of this research, so I don’t think we can speak to it.

**Mr. John Yakabuski:** Okay. So we do know, given your expertise and background, that the decision that was made by this government to site the plants where they did, in Oakville and Mississauga, would not have met your criteria. You’ve already answered that you would not have built them there; it would not have met the criteria for getting the green light.

Given that they made that decision—we now have at least \$585 million that this decision will have cost, and we’re anxiously awaiting the Auditor General’s report, which we expected before the Legislature reconvened, when the Premier promised it; to be fair, not all the holdup has been the fault of the government, but it is being held up, and we’re anxiously awaiting that—would it not be fair to say, then, that the cost that is being put on the backs of ratepayers and taxpayers is due to the faulty decision of the government that should never have gotten the green light in the first place?

**Ms. Mary Ellen Richardson:** Again, I don’t think we can speak to that matter specifically. It wasn’t the focus of our research. In particular, I think we are here today to address the issue of how we’re going to move forward and the principles that should guide how we move forward. Frankly, that was the focus of our research; the questions that we asked other jurisdictions.

These are tough decisions. We have aging infrastructure that needs to be replaced and refurbished in the energy sector and in many sectors, and the question we wanted to address is: How do we do that and how do we move forward as a province? It was with that in mind that we looked at the principles that guide other jurisdictions in how they’ve tackled these same questions. So I feel that we can speak to those and we can speak to our experience and our research in those matters, but with respect to the specifics, I don’t think—I know—that we did not address those, and I don’t feel capable of—

**Mr. John Yakabuski:** No, you didn’t, in your research, and I wasn’t suggesting that you had. But we also



have your resumés here, or at least brief snippets of your qualifications and credentials, and they're impressive. So, regardless of the research you've done on this particular issue, you have a sense, you have an understanding, you have knowledge of the sector. Given your research but the conclusions you've drawn from your research about what should or should not receive a green light and what meets the test, as we say, when a project clearly did not meet your green light, as you've already indicated agreement with my statement that it did not meet the green light, then is it not fair to say that the government that made those wrong decisions is responsible; whoever made those decisions. At the end of the day, we had the former Premier of Ontario, perhaps to some degree trying to defend the current Premier of Ontario, sit in that very seat in a different room and say, "It was my decision. It was my decision." Is it not fair to say, then, that that person who makes that decision is responsible to the people of Ontario for whatever costs are now being borne by them?

0910

**Mr. Richard Carlson:** That is an issue—as opposed to responsibility over any particular case in point. That is not an issue that we have examined, and I would not feel comfortable discussing that. That is a very complicated issue.

As we say, this has been a systemic problem for many decades in Ontario—a lack of social licence—and that needs to be improved. We are looking at how we can improve so that in the future there's less likelihood of any such problems arising.

**Mr. John Yakabuski:** We're in the future, and it's still going on. In fact, it's worse, because it doesn't just involve Mississauga or Oakville; it involves half the rural communities in this province. They continue to insist, "Daddy knows best. We're going to build those wind turbines wherever the heck we please. It doesn't matter what the community says, and it doesn't matter what the economic benefits may or may not be. We're going to do it because it fits with our narrow ideology about where we think energy should go." That's what this government continues to do. Research notwithstanding, I don't believe for a minute that that could possibly fit with your criteria for getting a green light based on how you understand and how you perceive the energy sector, its future and public involvement in those decisions.

**Mr. Richard Carlson:** Your concerns actually validate some of our points. We're saying that we need to have a public discussion over this. We need to be able to sit down and talk about what kind of energy policy people in Ontario want. That is pretty much what you are saying. We're looking at the future as to what is coming up and how we can change that. We have identified that there have been problems for many years, and now we want to know how we can improve it so that there will be fewer problems in the future. That is really what we're looking at.

As to current cases, I'll allow you to reach your own opinion based on our research.

**Mr. John Yakabuski:** I appreciate your visit here today. I appreciate your expertise and your research. I hope that when this government—however much longer we have to put up with them—makes decisions, that they talk to people who have actually done some research. Thank you very much.

**Mr. Richard Carlson:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** To the NDP side: Mr. Tabuns, 20 minutes.

**Mr. Peter Tabuns:** Good morning. Thank you for coming today.

As I look at your documentation, there seems to be a pretty clear focus on trying to depoliticize the whole process of energy planning and generation siting. Is that fair to say?

**Mr. Richard Carlson:** We look at the two areas: planning and policy. The government definitely has a role in coming up with policy on a provincial scale. What is the future? Planning should be after public consultation and engagement and looking at the benefits.

**Ms. Mary Ellen Richardson:** If I could just add: These are assets and infrastructure that have long lifespans. Those lifespans go beyond any political cycle and therefore, we believe, need a long-term outlook and good policy. I think your characterization is quite accurate.

**Mr. Peter Tabuns:** That being the case, the government set up the Ontario Power Authority as an arm's-length agency to make these decisions, as we saw extensively in the emails that we, as a committee, reviewed. When they didn't like the arm's-length agency's actions, they just worked around them. They negotiated with proponents they didn't have contracts with. In any way, shape or form, did this government follow your recommendations when it came to their version of depoliticizing this energy system?

**Ms. Mary Ellen Richardson:** One of our recommendations, indeed, is that planning should be done by an independent expert agency, whatever that's called, and that there should be a review process for the plan that results from that. Those two agencies, if you will—embedded in their mandate would also be public consultation and stakeholder consultation. So there is a lot more transparency of process in our recommendations and certainly in what we've seen elsewhere.

**Mr. Peter Tabuns:** Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Time is over, Mr. Tabuns. Thank you very much.

Back to the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you very much.

Let's do something novel and go back to your report. The last series of recommendations we talked about was integration, so let's move on to your transparency and accountability recommendations.

You state, "If the planning process is transparent and accountable, people will be more likely to support the plan and accept planning decisions." Let's expand on that a little bit. What steps need to be taken to improve transparency and accountability in electricity planning and siting?



**Mr. Richard Carlson:** We've identified three steps initially that can be taken.

First of all is the need to improve statistical availability, analysis and reporting. This is an issue in most of Canada that we looked at, not just Ontario. It's very difficult to get current, up-to-date information on the Ontario energy system, and broken down by region, broken down by generation type, so people can really understand what is happening in Ontario. A lot of that information is very disparate and scattered throughout very different sources, federal and provincial. It's hard to get an accurate picture of what's going on. Without that information, it's impossible for not only decision-makers or investors but also the public to make good decisions about the future—unless they actually know what is happening or what is going to happen.

I'll skip down to number 12. We're looking at policy changes, and government definitely has a role in setting energy policy. But that should be debated before the Legislature, as opposed to the directives that have been issued before that, so that there can be full accountability, democratic accountability of energy policy in Ontario, as well as public consultation and discussion so that there can be an acceptance of where we're going. Where that direction is is up to the discussions that go on, as opposed to any particular generation type.

Finally, as I mentioned in my opening statement, at the moment, Ontario is blessed with a surplus of power. Now is really the time that we should stop and take a look and see where we are and how we can improve things in the future so that we do not repeat what has happened.

**Ms. Mary Ellen Richardson:** I'll just add to that, if I may, the statistical availability. We talk a lot about integrating regional and community planning with provincial planning. We believe that municipalities and local authorities definitely have the capacity to do that and do it in other forms of infrastructure. But at the same time, we understand that our energy planning system in this province has been quite fragmented, and therefore they may not have all of the information they need to make those decisions. That comes back to the need for better information sharing between the different planning levels and, in fact, this notion of a central information repository, if you will. Again, that is best practice in terms of what we have found elsewhere. We believe that good information will support good decision-making ultimately.

I just wanted to add that point.

**Mr. Bob Delaney:** In your report, you state that, compared to Ontario, other jurisdictions are doing a better job of incorporating greater democratic review and accountability in planning. Because of this, they're able to secure greater public support for long-term energy plans and for energy infrastructure. In particular, your report compares Ontario's energy planning process to that of New South Wales in Australia, to British Columbia, to Great Britain, New York state and Sweden.

Could you elaborate a bit? What are some of the lessons that Ontario could learn from these jurisdictions, and what best practices should we follow to achieve greater buy-in from the public on long-term energy planning?

**Mr. Richard Carlson:** We identified quite a number of recommendations and best practices throughout the report. One of the main important areas is that there is more of a discussion on energy policy right from the beginning. It starts early and it continues on throughout the entire time. It's not irregular or ad hoc or only when certain particular things come up. It is discussion that goes on: What is the future going to be? A lot of these places have different visions of the future, but they have managed to get broad public support on the big issues as to what they want it to be.

0920

Beyond that, especially in many cases like Sweden and the UK and, to a certain extent, New South Wales, because it's a liberalized market, the siting process and everything is inherently a lot more depoliticized, as it is up to the developers to satisfy the local requirements. But there is generally an acceptance that the public has to be consulted and that there have to be long-term consultations.

Another important thing is that options have to be looked at so that developers or the government do not issue a, "This is what we want to do. What do you think?", but that there are options—"These are different things that we could do. These are the benefits and these are the cons of everything." There are trade-offs in any energy system. There is no perfect one, unfortunately, so we need to be able to have a public discussion of what those trade-offs are so that we can then move forward. Then once that is decided, it is up to the expert agencies or the developers, depending on the jurisdiction, to actually implement it, and that has been left depoliticized, and the planning is very much kept local, and they sometimes will have independent siting boards. Those also include local representation in many cases as well.

**Mr. Bob Delaney:** Okay.

**Ms. Mary Ellen Richardson:** I think a key element of those jurisdictions that we've studied is that the local communities or local authorities have the accountability for energy planning within their borders. That is where the local opportunities often lie, and the plans are developed that support their sustainability goals. Often, they are not only their energy and energy-efficiency goals, but also their economic development and environmental goals. In those jurisdictions, with energy planning more decentralized, if you will, local authorities are finding solutions that actually meet their local needs in much more holistic ways. Again, we refer to energy more broadly than just electricity and also consider the thermal energy needs of communities.

The experience is that, yes, the opposition occurs at the community level, but so also do the opportunities, and putting the accountability for energy planning closer to the community has helped, as Richard said, to get the



social licence to move forward because the benefits are more immediately transparent. Again, I think that the notion of embedding energy planning along with other infrastructure planning in a municipality's mandate is very consistent with our view of the opportunity and the need to integrate between community, regional and provincial plans.

**Mr. Bob Delaney:** Let's conclude our time with your recommendations on next steps.

**Mr. Richard Carlson:** Implement our report—next steps? The next steps would be, I think, to start having a public discussion—well, two steps, actually. First would be that we have to start allowing information to be available so that people can understand what is happening in Ontario. That is very important, not just in the siting but in energy in general as we're talking about electricity and thermal.

The second would be to start having a discussion over what it is we want, what kind of energy system we want in Ontario and what is the best and most cost-effective way of meeting that goal. Like I say, there are many different ways we can go forward, but we need to make sure that there is a vision of where people want to be somewhere in the future.

**Ms. Mary Ellen Richardson:** I think there's an opportunity to look at the provincial planning statement with respect to energy planning in particular—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. Mary Ellen Richardson:** —and I believe that there is an opportunity to refine the review criteria for the Ontario Energy Board against which the provincial plan will be assessed.

**Mr. Bob Delaney:** Any concluding remarks? I'm not going to ask you a question in the last 30 seconds.

**Ms. Mary Ellen Richardson:** We thank you for the opportunity to appear before this committee. I think you're doing very important work, and we look forward to a brighter future where we are trying to institute some of the recommendations that we've put forward. Thank you for the opportunity.

**Mr. Bob Delaney:** Thank you, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. As part of that brighter future, Mr. Yakabuski, I offer the floor to you.

**Mr. John Yakabuski:** Thank you very much. The sun is shining.

There are two questions we ask all those who appear before this committee. The first question is—and each of you could answer it individually. Do you know how much the cancellation of these power plants is actually going to cost?

**Ms. Mary Ellen Richardson:** No.

**Mr. Richard Carlson:** No. I am looking forward to the Auditor General's report, though.

**Mr. John Yakabuski:** Do you know who ordered the cover-up of the information surrounding the costs of the cancellation of these power plants?

**Mr. Richard Carlson:** No, I do not.

**Ms. Mary Ellen Richardson:** No, I do not.

**Mr. John Yakabuski:** Thank you very much. I'm just going to wind up by, again, thanking you for coming. I appreciate your frankness and candidness.

Based on your testimony this morning, it would be my recommendation to the Liberal government and the Liberal Party just to simply enter a guilty plea and throw themselves at the mercy of the court.

Thank you for coming in this morning.

**The Chair (Mr. Shafiq Qaadri):** To the NDP side: Mr. Tabuns.

**Mr. Peter Tabuns:** My thanks to the witnesses.

**The Chair (Mr. Shafiq Qaadri):** Thanks to you, Mr. Carlson and Ms. Richardson, for your deputation and report on behalf of the Mowat Centre.

Since we do have extra time, we have some issues with regard to confidential and non-confidential documents. I invite the Clerk to lead us through that.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** We received confidential and non-confidential documents from the OPA in regard to the August 27 motion. I can distribute them, one per caucus, the confidential ones, as per committee practice. Then committee members can decide at a later date what they want to do with them and keep them confidential for now. Again, it's up to the committee to decide what they'd like to do.

**The Chair (Mr. Shafiq Qaadri):** That's fine?

**Mr. John Yakabuski:** I think they're being distributed to Mr. Fedeli.

*Interjection.*

**Mr. John Yakabuski:** He has been the recipient on behalf of our caucus.

**The Chair (Mr. Shafiq Qaadri):** Thanks, colleagues. We'll return here after recess, at 3 p.m.

*The committee recessed from 0927 to 1501.*

MR. RYAN DUNN

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the Standing Committee on Justice Policy once again to order. Our next witness, Mr. Ryan Dunn, come forward to be affirmed by our Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Ryan Dunn:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Dunn. Your five-minute introductory address begins now.

**Mr. Ryan Dunn:** Thank you, Chair and committee members. My name is Ryan Dunn, and I joined Queen's Park in February 2011 as an assistant to Minister Brad Duguid. After the election in 2011, I was asked to join Minister Bentley's office as a legislative assistant. In February 2013, I left government.

For the purposes of this committee, I think it's important to provide context about my job as legislative assistant to the minister. The legislative assistant's role across government is to assist and provide the minister



with the information they need to respond to questions in the House and in the media. This meant that I would routinely obtain from the ministry facts, stats and messages to include in the minister's House book and other media materials such as Qs&As. In addition, the legislative assistant's job is to review documents so that the minister can respond to questions in the House or in the media.

My role while the minister was at the Standing Committee on Estimates was to ensure that the minister had the information he needed to answer the committee members' questions. This included asking ministry officials for stats, facts and page references from the government's long-term energy plan.

In addition, I was asked to review documents that the ministry and the OPA had assembled in response to a motion passed at the committee. I reviewed a photocopy of the OPA's documents and a photocopy of the ministry's documents so that the minister could respond to questions in the Legislature or the media.

The Ministry of Energy lawyers and the OPA lawyers were the custodians of the documents, and they had control over what was responsive and what was not responsive. The minister's office had no authority in the matter.

Finally, I would like to address the issue of my own records and emails. As many people have testified before this committee, political staff, including myself, were not properly trained on the archives and records management act. During the dates in the Standing Committee on Estimates motion, I was not actively involved in the policy or decision-making around the cancellation of the gas plants, as I was the legislative assistant.

The electronic communications I was privy to on the gas plant file during that period of time were mostly limited to draft Qs&As or communications materials.

Thank you. I look forward to being as helpful as possible.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Dunn. We'll begin with the PC side. Mr. Fedeli, the floor is yours.

**Mr. Victor Fedeli:** Thank you very much, Chair. I appreciate it. Welcome, Mr. Dunn. When you ended your talk, basically about how you were not properly trained and that type of thing, does that mean you deleted your emails?

**Mr. Ryan Dunn:** I would keep what I needed to do my job.

**Mr. Victor Fedeli:** I appreciate that, but did you delete your emails?

**Mr. Ryan Dunn:** Again, as I said, I would keep what I needed to do my job.

**Mr. Victor Fedeli:** What about to do our job? Did you keep those?

**Mr. Ryan Dunn:** I can't answer questions about what you need to do your job.

**Mr. Victor Fedeli:** You know, getting to the truth about who did what, who ordered the cover-up of documents—that type of thing.

**Mr. Ryan Dunn:** I think it's important to take a step back and go back to the Standing Committee on Estimates motion. I believe that the motion itself was asking for documents up until December 31, 2011. I believe the Standing Committee on Estimates was sitting in May 2012. Somebody can correct me if I have those dates wrong.

The most recent document I believe that the committee was asking for was close to five to five and half months old. You have to understand: In my job as a legislative assistant, I would do whatever I could to help the minister address the issue of the day. So oftentimes, I'm having to prepare his House book or prepare messages for him when he leaves the lobby, when he's going to get scrummed. So the documents that I would have—

**Mr. Victor Fedeli:** I'll take it as a yes, then, that you've deleted documents.

**Mr. Ryan Dunn:** I think it's important to finish because again, it's through the purview of my job that issues that are about eight months old—I wouldn't need to keep the draft Q&A or the messages simply because the issue wasn't relevant anymore. Moreover, the ministry would often keep the final copy of a Q&A.

**Mr. Victor Fedeli:** So I'll take it as a yes, then, that you deleted emails.

**Mr. Ryan Dunn:** So, again, as part of my job as legislative assistant, I'd be keeping what I needed to help the minister respond to questions in the Legislature.

**Mr. Victor Fedeli:** We would have had the opportunity to choose whether those were good ones to keep or not had we seen them all.

We've had some Hansard discussion—your name has come up an awful lot. I have said this to probably five people that have sat in the chair: "Are you the guy? Are you the guy at the centre of all this?" They've all said no. But let me just tell you what about a half a dozen Liberal operatives and others have said.

Peter Tabuns asked Jesse Kulendran one day about, "Was there an overall plan for the production of documents?" It got down to—the minister's office indicated they didn't have these responsive records. Mr. Tabuns asked Jesse Kulendran, "Do you know who communicated that to you?" "I do, yes. It was Ryan Dunn." It was the first time that we got a "Ryan Dunn" out of somebody.

Craig MacLennan was asked, "What happened when you first heard, 'You need to turn documents over'?" Give us a couple of names of what happened." Well, you know, "There were ongoing negotiations," "I wasn't lead on the file," "There were heavy consultations with government." I said, "By whom? I'm just trying to get some names here. Who were you talking to?" "My colleague Ryan Dunn." That's from Craig MacLennan. He says it's you.

Serge Imbrogno, the deputy minister: Mr. Tabuns again asked him, "I'm going back to an earlier question about documents. You noted, and we discussed, that the minister's office reviewed copies of ministry and OPA



documents.” “That’s correct,” he said. “Who in the minister’s office did that review?” “I know Ryan Dunn would have gone to the OPA to review the documents.”

That’s Jesse Kulendran. That’s Craig MacLennan and Serge Imbrogno. I’m now asking Kevin Spafford, talking about his email, about not having to turn documents over. I’m talking about who has written a document: “Dear Mr. Prue?” “Yes.” I said to him, “This is Ryan Dunn, writing to you and others.” Yes, Ryan Dunn. It’s you. Kevin Spafford: Just recently we asked him about his involvement, and he said, “Well, if you’re referring to the letter we’re talking about here,” it’s from Ryan Dunn. You again. Finally, Andrew Forgione: He said, “I’m nobody here; I was just shadowing and helping out with the big guys.” “And who’s that?” “Ryan Dunn was the lead staffer.” It’s you.

So I’ll ask you the same question I’ve asked many. Are you the guy?

**Mr. Ryan Dunn:** I’m not the guy.

**Mr. Victor Fedeli:** You’re not the guy?

**Mr. Ryan Dunn:** I’m not the guy. So—

**Mr. Victor Fedeli:** Jesse Kulendran, Serge Imbrogno, Craig MacLennan, Kevin Spafford, Andrew Forgione: They all say, “It wasn’t me. Ryan Dunn was the guy.” Is that you?

**Mr. Ryan Dunn:** That’s not me.

**Mr. Victor Fedeli:** That’s not you? It’s a different Ryan Dunn they’re referring to?

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**Mr. Ryan Dunn:** Mr. Fedeli, let me back up again. As I said in my opening statement, my task as legislative assistant was to assist the minister. It was also to review documents.

When we talk about assisting the minister, I think anybody who was at the Standing Committee on Estimates would have seen me sitting over there with a big binder, trying to help the minister get the facts that he needed to answer the question—

**Mr. Victor Fedeli:** Yes, but you did more than that. You wrote letters. People have sworn under oath here that you wrote letters; you were the author of letters.

**Mr. Ryan Dunn:** Could you please point me to the letter that you think I authored?

**Mr. Victor Fedeli:** I just read a document from the Hansard. So what you’re saying under oath is, you don’t write those letters. You didn’t write the letter to Mr. Prue. You don’t write letters, then.

**Mr. Ryan Dunn:** Sir, I believe that the letter that went to Mr. Prue has the minister’s signature on it.

**Mr. Victor Fedeli:** Oh, they all have—I don’t think you’d sign for the minister, but did you write the letter?

**Mr. Ryan Dunn:** I did not write the letter—

**Mr. Victor Fedeli:** You did not write that letter.

**Mr. Ryan Dunn:** The letter would have come from the ministry. The letter to the Chair on estimates—I think there were two letters—two letters?—two or three letters. Again, as his legislative assistant, I would have seen drafts of those letters before they went. But again, the minister would have signed that. The minister would

have had to have been comfortable with the content that was in there.

**Mr. Victor Fedeli:** Serge Imbrogno says that you went to the OPA to review the documents—and the ministries. Who told you to do that?

**Mr. Ryan Dunn:** I was asked by my chief of staff to—

**Mr. Victor Fedeli:** And who is that?

**Mr. Ryan Dunn:** At the time, it was Craig MacLennan.

**Mr. Victor Fedeli:** The guy that said it’s all you.

**Mr. Ryan Dunn:** Again, he asked me, in my role as legislative assistant, to go to the Ontario Power Authority to review the documents in advance of their release.

**Mr. Victor Fedeli:** Are you the one, then, who decided to take out every second one of OPA’s documents because it was just a little—it didn’t quite meet—because it said “SWGTA” instead of “southwest GTA”? That wasn’t you?

**Mr. Ryan Dunn:** No, sir, I gave no instructions to anybody—

**Mr. Victor Fedeli:** You gave no instructions. So all these people who say it’s you—they’re making this up under oath?

**Mr. Ryan Dunn:** Sir, I’ve sworn an oath here, and I’m telling you the truth about what my job was. It was my job to review documents.

**Mr. Victor Fedeli:** So what instructions did you give to the OPA, then? Because we know now, after sworn testimony and after just evidentiary proof, that there were 56,000 documents but they took 20,000 out the first time we got documents—kind of a little wink and just went ahead and gave us the 36,000 documents, hoping we’d be maybe silly enough to think that that was all of them. Two weeks later, we did get the 20,000 documents. Are you the one who ordered the 20,000 documents to be removed?

**Mr. Ryan Dunn:** Sir, I did not have the authority to order any documents removed. I would like to point out that—I believe that the deputy minister and the CEO of the Ontario Power Authority have come to this committee to testify on, I guess, the events that transpired.

**Mr. Victor Fedeli:** Yes, we have sworn testimony that tells us the members of the Ministry of Energy were at OPA, telling them to remove certain documents. We have that sworn testimony by more than one person.

**Mr. Ryan Dunn:** Again, I think it’s—

**Mr. Victor Fedeli:** So—

**Mr. Ryan Dunn:** Sorry, Mr. Fedeli. May I get this on record?

**Mr. Victor Fedeli:** —Jesse Kulendran worked with you on the document production. Did you direct her to withhold any documents?

**Mr. Ryan Dunn:** No, I did not.

**Mr. Victor Fedeli:** So it wasn’t you.

**Mr. Ryan Dunn:** No.

**Mr. Victor Fedeli:** You’re not the guy that told her, then. Okay. Did you direct the destruction or deletion of documents whatsoever?

**Mr. Ryan Dunn:** No.

**Mr. Victor Fedeli:** Even including your own email that you deleted?

**Mr. Ryan Dunn:** I did not instruct anybody to suppress or delete any documents.

**Mr. Victor Fedeli:** Did you delete your own documents?

**Mr. Ryan Dunn:** I believe I've talked about my email practices before. Again, as political staff, we were not trained on the archives and records management act.

Again, the dates on the Standing Committee on Estimates motion—you were asking for documents that were anywhere from five months to two and a half years old.

**Mr. Victor Fedeli:** All these people, though—again, Kulendran, MacLennan, Imbrogno, Spafford, Forgione—they all say it's you. We only have 800 email from you. You're about the least amount of email we have. But they all say you're the guy. How come we have so few email from you?

**Mr. Ryan Dunn:** Because I was not involved in the policy or decision-making on the gas plant file.

**Mr. Victor Fedeli:** Who told people to withhold documents from the committee, then? Was it Minister Bentley? The Premier's office? If it wasn't you, and there are only a few above you—

**Mr. Ryan Dunn:** I don't know who would have said anything of that sort. I know that the Deputy Minister of Energy and Jesse Kulendran have been to this committee to testify on it. I was not part of any of those conversations.

**Mr. Victor Fedeli:** Do you acknowledge that there were 20,000 documents withheld in the first round, when this committee received the 36,000? Do you acknowledge that there were 20,000 withheld and then subsequently turned over, two weeks later? Do you understand that?

**Mr. Ryan Dunn:** I think that there was—well, from what I can tell from reading the testimony of the deputy minister, Jesse, Kristin Jenkins and the CEO of the Ontario Power Authority, I believe that there was some miscommunication on that.

**Mr. Victor Fedeli:** Oh, there was no miscommunication. This was a purposely done, devious, purposely motivated effort to conceal documents from this committee. Nobody is going to whitewash that. That's so, so old news now. We know that for a fact, that this committee had 20,000 documents withheld on purpose. We're just trying to find out who is the one who did it, and everybody is pointing their finger at you, by the way, so far—five of them, including the deputy minister. They're all pointing fingers at you, saying that you're the guy; you know everything.

So, if it wasn't you, then, whose decision was it? Was it the Premier's office or Minister Bentley's, then? There's only two above you.

**Mr. Ryan Dunn:** Again, I don't know your line of questioning, because I believe—

**Mr. Victor Fedeli:** My line of questioning is, who ordered the cover-up of the documents, period.

**Mr. Ryan Dunn:** I don't believe there was a cover-up of the documents, Mr. Fedeli.

**Mr. Victor Fedeli:** Well, but we know that to be done. That's not a question about if there was; we know that. The 20,000 documents were withheld from us. We have sworn evidence how they were withheld. We're just trying to find out the "who" now. We're just quibbling over price here.

**Mr. Ryan Dunn:** Again, Mr. Fedeli, I believe that the deputy minister and Jesse Kulendran have come forward to this committee to testify—

**Mr. Victor Fedeli:** All right. So you're not going to answer that one.

What role did Andrew Forgione play in the document production process, then?

**Mr. Ryan Dunn:** Andrew's role and my role was simply to review a copy of the ministry's documents, to review a copy of the Ontario Power Authority's documents, so that we could prepare the minister to speak on them when they were released.

**Mr. Victor Fedeli:** You can simply sit here and say, "My role was simply." I don't accept that from you. We have from others—Andrew Forgione, he was shadowing; he was helping out. Somebody had to do the damned work. Was it you?

**Mr. Ryan Dunn:** I reviewed the copy of—

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, as the afternoon progresses, I would just invite everyone to use parliamentary language and decorum. Thank you.

**Mr. Victor Fedeli:** Well, Chair, thank you for your comments, but I've got to be honest with you: I've had it up to the top here with the Liberal operative witnesses who refuse to give us the full answers, who have deleted emails, who tell us they have nothing to do with it, when we've got five sworn people here, including some very senior people, people I know have all said here that he's the guy. So he's the guy.

Who else was involved in the document production process, then?

**Mr. Ryan Dunn:** The production of documents was done by the ministry and the Ontario Power Authority, and I believe that the deputy and the CEO have testified to that.

**Mr. Victor Fedeli:** Well, do you have the documents? Are they handed out?

Let's start with some of these documents. Document 1: You requested a legal opinion from William Bromm regarding contempt of Parliament back in June 2012. If you weren't planning to comply—well, if you were planning to comply with the committee's request, why did you seek this opinion on contempt back in June?

**Mr. Ryan Dunn:** Sorry. Which document were you—

**Mr. Victor Fedeli:** Document 1, the top page.

**Mr. Ryan Dunn:** Oh, okay.

**Mr. Victor Fedeli:** Page 2, down at the bottom, "In light of the motion"—this is from you now; this is one of your emails. "In light of the motion before the committee, the minister needs to understand the nature of the motion ... potential jeopardy that it places the minister ...



regarding contempt of Parliament.” Were you planning to be in contempt of Parliament as early as June 2012?

**Mr. Ryan Dunn:** No, Mr. Fedeli. I—

**Mr. Victor Fedeli:** Then why would you have sent this email asking, “What is the ... principle of contempt of Parliament? Can a committee impose contempt ... on a minister? When is it applicable? Who rules on it? Who is able to impose it?” Why would you ask all those things way back in June?

**Mr. Ryan Dunn:** Sir, I’m not a lawyer, nor am I a parliamentary expert. I don’t pose to be one, and in my job as a legislative assistant, it would have been my role to provide the minister with the information that he needed. So—

**Mr. Victor Fedeli:** So are you suggesting the minister asked you, “Check out how far I can go until I’m in contempt”? Is that what you’re suggesting?

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**Mr. Ryan Dunn:** No. I believe that what we were trying to do is understand. I don’t know that anybody at the time knew anything about contempt of Parliament or contempt, and we were—

**Mr. Victor Fedeli:** Why would you worry about that if you were planning on turning over all the documents? How could contempt have been an issue? You were planning this back in June 2012.

**Mr. Ryan Dunn:** Sir, I don’t know if anybody has a copy of Mr. Leone’s motion, but I believe the word “contempt” was introduced in Mr. Leone’s motion at the Standing Committee on Estimates—

*Interjection.*

**Mr. Ryan Dunn:** Just let me finish, please. We didn’t know what that meant, and we wanted to know what contempt meant, and all of the things that I guess legally come with it.

**Mr. Victor Fedeli:** So go to the next set of documents. You’ll see Liberal gas plant scandal document 2, page 1 of 13. It’s a Vapour-lock call that you’re required to attend. Again, this is back in June, from John Brodhead of the Premier’s office. What was discussed at that Vapour-lock meeting?

**Mr. Ryan Dunn:** I don’t recall. That’s over a year and a half ago.

**Mr. Victor Fedeli:** But you recall a year and a half ago finding out about contempt?

**Mr. Ryan Dunn:** Well, sir, I believe you’ve seen the email.

**Mr. Victor Fedeli:** Go to the next page, then—

**Mr. John Yakabuski:** The email about the call.

**Mr. Victor Fedeli:** Yes, I’m looking at the email about the call.

Actually, my time is short. Let’s just stay in this document 2. Go to page 13 of 13. This is from you. This is to David Phillips, Kevin Spafford and Andrew Mitchell. “Here is the letter that the minister is comfortable with.” This is the “Dear Mr. Prue” letter. Are you telling us here that you did not write this letter? You’re sending the letter now. You’re sending the letter around.

**Mr. Ryan Dunn:** Sorry, sir; I just need to read it. This is the first time I’ve seen this in a while.

**Mr. Victor Fedeli:** “I’m writing to provide an update ... estimates committee,” etc.

**Mr. Ryan Dunn:** No, I did not write this letter.

**Mr. Victor Fedeli:** You did not write this letter. But you’re sending the letter.

**Mr. Ryan Dunn:** Yes. It would be my job as the legislative assistant to routinely keep folks in the government House leader’s office in the loop on anything that the minister would be providing to the committee. In this case, I believe I was simply doing my job and forwarding the information to him.

**Mr. Victor Fedeli:** So this is pretty much a policy letter. Would you not agree to that?

**Mr. Ryan Dunn:** Sorry, sir?

**Mr. Victor Fedeli:** Is this a policy letter?

**Mr. Ryan Dunn:** I think this is a draft of a minister’s letter that was going to be going to committee.

**Mr. Victor Fedeli:** Who wrote the letter?

**Mr. Ryan Dunn:** I don’t know.

**Mr. Victor Fedeli:** You’re the senior policy adviser—senior. You’re not the shadow guy. You’re not the guy who’s overlooking—somebody else here told us they just proofed typos. You’re the senior guy here. Who wrote this letter? Who sent it to you? How did you get it to send it to somebody?

**Mr. Ryan Dunn:** I would have received it from the ministry.

**Mr. Victor Fedeli:** Who? Why don’t we have that email where they said, “Here’s the letter we crafted”? All of the email we have from you—we only have you with this letter.

**Mr. Ryan Dunn:** So, sir, I’d like to point out that the date on this letter is July 11, 2012. I believe that the original motion from the Standing Committee on Estimates was up until December 31, 2011.

**Mr. Victor Fedeli:** Yeah, yeah, yeah. We’ve had 110,000 documents since then. We have all kinds of documents. How do you think we got this?

**Mr. Ryan Dunn:** But you asked me why it wouldn’t have come out with the Standing Committee on Estimates motion—

**Mr. Victor Fedeli:** Yes, because it doesn’t exist. You’re the only one who has ever had your name on this letter. There’s no other email from anybody with this letter.

**Mr. Ryan Dunn:** I believe that the date on the letter was outside of the date of the motion for the standing committee—

**Mr. Victor Fedeli:** Yeah, yeah, yeah. We’ve had many motions since you’ve been gone to wherever it is you’re gone to. We have lots of motions and we have a lot of other documents. We’re getting the picture painted here around you. We’re getting that picture now. It’s being painted—not by you and the emails you may have deleted, but by emails that we have recovered—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. To the NDP. Mr. Tabuns, 20 minutes.

**Mr. Peter Tabuns:** Thank you, Mr. Dunn.

**Mr. Ryan Dunn:** It's good to see you, Mr. Tabuns.

**Mr. Peter Tabuns:** Good to see you as well.

Were you responsible for assembling the documents from the minister's office in response to the direction from the estimates committee?

**Mr. Ryan Dunn:** I was asked by the FOI coordinator to ask my colleagues if they had any documents that were responsive to the motion. I—

**Mr. Peter Tabuns:** Sorry. And who was the FOI coordinator?

**Mr. Ryan Dunn:** I don't recall who the FOI coordinator was at the time.

**Mr. Peter Tabuns:** It was in the minister's office?

**Mr. Ryan Dunn:** No, it would have been from the ministry.

**Mr. Peter Tabuns:** Okay. Why were you given that task?

**Mr. Ryan Dunn:** I was the legislative assistant.

*Interjection.*

**Mr. Ryan Dunn:** And I would like to address sort of some of the timeline issues. In May 2012—I just have to remember my years here. In May 2012, I was promoted to be a policy adviser to the minister for conservation policy. However, they needed to find a new legislative assistant before I could, I guess, assume that role. We would have hired somebody in June, and then I was essentially training them through that period of time. Because we were obviously dealing with the documents from the Standing Committee on Estimates, I would have been essentially performing the function of a legislative assistant because the new person just wasn't up to speed—

**Mr. Peter Tabuns:** Okay. I think you've cleared that up. Who did you report to?

**Mr. Ryan Dunn:** As legislative assistant?

**Mr. Peter Tabuns:** Yes.

**Mr. Ryan Dunn:** I would have reported to the director of communications and the chief of staff.

**Mr. Gilles Bisson:** Why the director of communications?

**Mr. Ryan Dunn:** The way it's often structured in a minister's office, the legislative assistant is part of the communications shop, but everybody reports to the chief of staff.

**Mr. Peter Tabuns:** Okay. And the description of your role in putting all of this together?

**Mr. Ryan Dunn:** Putting all of what together?

**Mr. Peter Tabuns:** Putting together all the documents from the minister's office: How was that described to you?

**Mr. Ryan Dunn:** Again, it was a year and a half ago. I recall sitting in a meeting with the FOI coordinator and somebody from the deputy's office, and they informed us that we had to do a search.

**Mr. Peter Tabuns:** And what were you told to remove from the search?

**Mr. Ryan Dunn:** Pardon?

**Mr. Peter Tabuns:** What documents were you told not to pick up in the course of the search?

**Mr. Ryan Dunn:** We were simply told to provide any responsive records to the motion.

**Mr. Peter Tabuns:** And were you given a list of search terms?

**Mr. Ryan Dunn:** I was not.

**Mr. Peter Tabuns:** So you were told, "Anything that's responsive to the motion" that passed through this committee, or the estimates committee at the time.

**Mr. Ryan Dunn:** Correct.

**Mr. Peter Tabuns:** Can you tell us what you did to secure those documents?

**Mr. Ryan Dunn:** I can talk about the search process. After I had a meeting with the FOI coordinator and the member from the deputy's office, I would have printed off copies of the motion that was passed at the Standing Committee on Estimates, and at our Friday staff meeting with all staff present—we had weekly Friday staff meetings to discuss various things—I brought this as an agenda item.

I asked my colleagues to provide—sorry. I distributed a copy of the motion and I asked my colleagues to provide any responsive records to me by—I would normally set a deadline to do it by, and then I would have followed up with each of my colleagues individually and asked them, "Do you have any responsive records?" And each of them reported that they did not.

**Mr. Peter Tabuns:** Did you personally have any responsive documents?

**Mr. Ryan Dunn:** I did not.

**Mr. Peter Tabuns:** Did the minister have responsive documents?

**Mr. Ryan Dunn:** I was asked to search the minister's computer. I went on to his government computer. I searched—well, opened up his Outlook, and he didn't have any documents.

**Mr. Gilles Bisson:** And emails?

**Mr. Ryan Dunn:** Any emails.

**Mr. Peter Tabuns:** So how many people worked in the minister's office?

**Mr. Ryan Dunn:** I can't recall the specific number.

**Mr. Peter Tabuns:** Ten? Twenty?

**Mr. Ryan Dunn:** Let's call it 10.

**Mr. Peter Tabuns:** Let's call it 10. And that office didn't produce a single document?

**Mr. Ryan Dunn:** Again, I'm not responsible for managing my colleagues' inboxes. It was my job to ask them if they had any responsive records, and I did that.

**Mr. Peter Tabuns:** Right. You're also confirming for me they had nothing?

**Mr. Ryan Dunn:** Each of them reported to me that they had no responsive records.

**Mr. Peter Tabuns:** And you told Jesse Kulendran from the ministry that you had no responsive documents?

**Mr. Ryan Dunn:** That is correct.

**Mr. Peter Tabuns:** Were you aware that Craig MacLennan regularly deleted everything he had, contrary to the law?



**Mr. Ryan Dunn:** Again, I was not responsible for managing my colleagues' email practices. I didn't know what their email practices were.

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**Mr. Gilles Bisson:** You say that you had these staff meetings once a week in order to discuss what was going on at the minister's office. Did you guys ever discuss the requests by the estimates committee to get the documents?

**Mr. Ryan Dunn:** We would have discussed the motion, and I would have asked them to provide any responsive documents.

**Mr. Gilles Bisson:** And we know that the minister didn't want to provide the documents initially. Can you tell us why that was and where that came from?

**Mr. Ryan Dunn:** Sorry, what do you mean?

**Mr. Gilles Bisson:** Well, you met every week. So my question is: At these staff meetings, did you guys discuss the refusal to release the documents to the estimates committee? Yes or no?

**Mr. Ryan Dunn:** I don't recall.

**Mr. Gilles Bisson:** So you never had a discussion in regard to this request by the estimates committee.

**Mr. Ryan Dunn:** We would have had a discussion where I would have asked my colleagues if they had any responsive records to the motion—

**Mr. Gilles Bisson:** No, no, no. Did you discuss, in the minister's office, at these staff meetings, the request by the estimates committee to get documents where your minister refused at the time? Was there any discussion about that?

**Mr. Ryan Dunn:** Sir, it was a year and a half ago. I can't recall what specifically—

**Mr. Gilles Bisson:** Do you think that they may have discussed that?

**Mr. Ryan Dunn:** Again, I wouldn't want to speculate. I can't recall.

**Mr. Gilles Bisson:** Are you throwing your minister—former minister—under the bus here? It was only him?

**Mr. Ryan Dunn:** I can't recall.

**Mr. Gilles Bisson:** Go ahead.

**Mr. Peter Tabuns:** Didn't it worry you that there were no documents?

**Mr. Ryan Dunn:** Again, it's not my job to manage their inboxes.

**Mr. Peter Tabuns:** No, I understand that. But you're in a senior position—

**Mr. Ryan Dunn:** At the time, I would have been in a junior position.

**Mr. Peter Tabuns:** Well, you were an issues manager by this point—

**Mr. Ryan Dunn:** Correct.

**Mr. Peter Tabuns:** —a senior position. You've got a minister who's facing a grilling at a committee. Having documents showing what really happened provides your minister with some defence to being prosecuted by committee. Weren't you worried that there was nothing?

**Mr. Ryan Dunn:** I don't know. I don't recall what I was thinking back then.

**Mr. Peter Tabuns:** Okay. Serge Imbrogno—Mr. Fedeli touched on some of this—says you were the point person in the minister's office reviewing OPA and ministry documents. Did you give the OPA instructions on what search terms to use that substantially limited their search?

**Mr. Ryan Dunn:** No, I did not.

**Mr. Peter Tabuns:** When you went to look at the OPA documents, did you not notice that quite a few documents appeared to be missing, something we noticed when we were given the documents?

**Mr. Ryan Dunn:** I believe when I went to the OPA—I would have gone to the OPA in July 2012. Andrew Forgione and I went there. We requested that a lawyer from the OPA be present in the room simply because we didn't want to be around the originals without somebody there. We thought that that was doing our due diligence.

**Mr. Peter Tabuns:** Yes. And?

**Mr. Ryan Dunn:** And we would have reviewed the documents. We would have looked at the pages. Again, we weren't responsible for managing what they put in. We weren't responsible for managing how they did their search. We were simply responsible for reviewing.

**Mr. Peter Tabuns:** I don't think I need you to go into that particular detail. Was a lawyer assigned by the OPA to sit in with you?

**Mr. Ryan Dunn:** Yes.

**Mr. Peter Tabuns:** Who was that?

**Mr. Ryan Dunn:** I can't recall the lawyer's name.

**Mr. Peter Tabuns:** And, again, you didn't notice that there seemed to be a lot of documents missing when you went through what they'd presented?

**Mr. Ryan Dunn:** Sir, there were 10 boxes of documents, and I was at the OPA for two days. I was reading documents. I wasn't looking to see what was included and what was not included. I was simply trying to understand what was in there so that the minister could respond to questions in the media and the Legislature.

**Mr. Gilles Bisson:** Were you part of any discussion in regard to strategy about how to deal with the request by the committee for the release of those documents?

**Mr. Ryan Dunn:** What do you mean by "strategy," sir?

**Mr. Gilles Bisson:** Were you part of any discussion with anybody on the minister's staff or the minister? When the estimates committee requested those documents, were you party to any discussion about strategy, how you should or should not release those documents?

**Mr. Ryan Dunn:** The minister, I believe, has come forward and testified that he didn't want to release the documents while the negotiations were going on.

**Mr. Gilles Bisson:** We understand that. Were you part of any discussion with the staff for the Minister of Energy, or with the minister, about strategies in how to deal with the issue of the estimates committee asking for those documents?

**Mr. Ryan Dunn:** I don't recall what specific conversations I would or would not have been a part of.

**Mr. Gilles Bisson:** Were you ever part of any conversation that dealt with strategies around how to control the release of the documents?

**Mr. Ryan Dunn:** I don't believe that we were trying to control the release of the documents.

**Mr. Gilles Bisson:** Well, we're looking at the emails, and the emails are pretty clear from you. There's an email here dated back in June 5, 2012, where you talk about the need to develop a strategy in order to deal with this. Were you just forgetting what you were writing?

**Mr. Ryan Dunn:** Which page, sir?

**Mr. Gilles Bisson:** Page 2.

**Mr. Ryan Dunn:** Sir, I've got two packages in front of me. I don't know—

**Mr. Gilles Bisson:** The Tory package, Liberal gas plant scandal—but if you look at number 2, it says, at the very bottom, “In light of the motion before the committee, the minister needs to understand the nature of the motion and the potential jeopardy that it places the minister....” Clearly, you were having a discussion. There was a problem; maybe your minister was in trouble. Do you recall having those discussions?

**Mr. Ryan Dunn:** I think that with the email that we're referring to I was trying to find out a couple of points about contempt. I believe on page 3 you've got the questions that I was asking.

**Mr. Gilles Bisson:** If you're worried about contempt, does that mean to say that you thought maybe there was an issue and that the minister may be in some kind of trouble?

**Mr. Ryan Dunn:** I believe that at the time there was a motion that was passed with the word “contempt” in it. We didn't know what that meant.

**Mr. Gilles Bisson:** So you guys didn't worry about that. You just went along on your merry business and never tried in any way to contrive the release of the documents?

**Mr. Ryan Dunn:** I believe that what we were trying to do in the document that you're referring to here was understand what “contempt” meant.

**Mr. Gilles Bisson:** I'm going to try one more time and then I'll give it back to my colleague here. Were you part of any discussion around strategies about how not to release documents to the estimates committee?

**Mr. Ryan Dunn:** I don't believe I agree with the premise of the question—

**Mr. Gilles Bisson:** I don't care if you agree with it. My question is, were you party to any discussion—it's a very simple question—were you party to any discussion that had to do with how or how not to release the documents to that committee?

**Mr. Ryan Dunn:** The instruction that I received from the minister was that as soon as negotiations had concluded, to release the documents. He always said to us, “It's not a question of if they go out; it's a question of when they go out.”

**Mr. Peter Tabuns:** Just on this question of your strategizing or not, if you could take a look at the package that was most recently given to you.

**Mr. Ryan Dunn:** Yes, sir. Where would you like me to go?

**Mr. Peter Tabuns:** It should look like this. That smaller package in front of you. It's an email from you to Andrew Mitchell, David Phillips, Kevin Spafford and John Brodhead: “Mitch and I would like to chat if you folks are around. We have mapped out some potential scenarios based on our conversation earlier today.”

The next page is talking about how you'd negotiate with the opposition in order to delay or limit the way documents were given out. It seems pretty straightforward to us that you were part of a group that was strategizing on filibustering, on holding things back to give you leverage so that you could decide when, where and in what form documents would be released. In this email, you signed yourself as senior policy adviser.

**Mr. Gilles Bisson:** Not the legislative assistant any more.

**Mr. Peter Tabuns:** No.

**Mr. Ryan Dunn:** On that, on the legislative assistant bit again, I was performing the functions of a legislative assistant at the time.

**Mr. Gilles Bisson:** But answer the question.

**Mr. Peter Tabuns:** To the point, you were strategizing about how to deal with this and push this back.

**Mr. Ryan Dunn:** Again, I haven't had an opportunity to review this document in detail, but from what I'm looking at right now, this is a document to try to get the motion amended. I know Mr. Bisson is going to want to say something, but—

**Mr. Peter Tabuns:** He will, I'm sure.

**Mr. Ryan Dunn:** I believe that when we talk about documents and we talk about amending the motion, those are two entirely different things. The minister was concerned with a motion passing that would have the word “contempt” in it. What we were trying to do and what I believe the government House leader's office was trying to do was reach an agreement, a deal—whatever word you want to use—

**Mr. Gilles Bisson:** To not release the documents.

**Mr. Peter Tabuns:** You were looking for leverage to push us back on this.

**Mr. Ryan Dunn:** Again, what I was saying earlier is that what we were looking to do was find a way to amend the motion so that the word “contempt” would be taken out. Again, I would like—

**Mr. Gilles Bisson:** So you recognize that in fact you were in a position where your minister might be found in contempt.

**Mr. Ryan Dunn:** I don't know what the minister would or would not have been found in.

**Mr. Gilles Bisson:** So he never thought that maybe there might be a contempt motion coming forward?

**Mr. Ryan Dunn:** I think that what we were trying to do at the time—

**Mr. Gilles Bisson:** Do you realize that everything you say here is under oath and if you lie, it's perjury?

**Mr. Ryan Dunn:** I believe I swore the oath, sir.



**Mr. Gilles Bisson:** I'm just warning you. It's pretty incredible what you're trying to say to this committee, that as a senior policy adviser to the minister you were not party to any discussion about strategy and how to release these documents, you had nothing to do with the release of documents, you had nothing to do about deciding who got what. It's not credible. How do you explain the gaps in the testimony you're giving us to the facts that we have in documents?

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**Mr. Ryan Dunn:** Sir, I believe when it comes to the release of documents, it was the ministry and the OPA that released the documents. They were the ones who delivered them to the Clerk.

**Mr. Peter Tabuns:** But in fact your minister's office was asked for documents, and not a single document, not a single email, not a single letter—zero—came from what was the black hole of the minister's office.

**Mr. Ryan Dunn:** So what's your question, sir?

**Mr. Peter Tabuns:** Well, my point is that it was not just a question of the ministry and the OPA. It was your office that was responsible for keeping track of what was going on in the office and producing documents for this committee, and a very big chunk of documents simply disappeared in that office. For you to come to us and say you were following the directions when in fact documents were just simply being disposed of is hugely problematic.

**Mr. Ryan Dunn:** Sir, again, my involvement when it came to documents in the minister's office—I was asked to ask my colleagues if they had any responsive records to the motion. I did that. That was the extent of my role in that.

**Mr. Peter Tabuns:** And you had no documents either?

**Mr. Ryan Dunn:** Again, I believe I've addressed that.

**Mr. Peter Tabuns:** You have, and it seems fairly clear what the practice was in the minister's office, and that was large-scale destruction of documents on an ongoing basis. The fact that you found nothing when you went through is astounding to us.

**Mr. Ryan Dunn:** Sir, may I just quickly add a point in—

**Mr. Peter Tabuns:** I do have a different question for you, though. Did you counsel the minister to not turn over documents to the committee?

**Mr. Ryan Dunn:** I don't recall ever giving the minister that counsel.

**Mr. Peter Tabuns:** Were you part of the discussion with the minister about turning over documents?

**Mr. Ryan Dunn:** I don't recall being a part of any discussion where the minister would have talked about turning over documents. Again, the instruction that we had from the minister and what he gave our office, what he told our entire office, was, "I want the documents to go out when the negotiations have completed."

**Mr. Peter Tabuns:** Did you discuss document production with the Premier's office staff?

**Mr. Ryan Dunn:** We would have given them sort of a heads-up when the ministry would have notified us that they were going to deliver the documents on a specific date. We would have given them a heads-up that the documents would be going at a specific date and time.

**Mr. Peter Tabuns:** Did you talk to the government House leader's office about this?

**Mr. Ryan Dunn:** Again, my job as legislative assistant—well, I guess working as a legislative assistant—would have been to provide both the Premier's office and the government House leader's office a heads-up when things were happening, so I believe we've had a letter that I've written—or not that I've written. Excuse me; I did not write that letter. But the minister's letter—I wrote the email at the top, and what we would do is give them forewarning and advance notice—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Gilles Bisson:** In the last minute we have, Serge Imbrogno—I'm not pronouncing the name right—says you were the point person in reviewing the documents from OPA and the minister's office. Is that the case?

**Mr. Ryan Dunn:** I was reviewing the documents.

**Mr. Gilles Bisson:** So you were the point person?

**Mr. Ryan Dunn:** I don't believe I would characterize myself as the point person, sir.

**Mr. Gilles Bisson:** So is he lying? Are you accusing him of lying? He's telling the lie and you're telling the truth?

**Mr. Ryan Dunn:** Sir, I'm simply saying that I would not characterize myself as the point person.

**Mr. Gilles Bisson:** So he just made that up?

**Mr. Ryan Dunn:** It was my task, along with Andrew Forgione—it was our task to review the documents that the OPA and the ministry—

**Mr. Gilles Bisson:** Did you withhold any documents?

**Mr. Ryan Dunn:** I did not withhold any documents.

**Mr. Gilles Bisson:** So he's lying?

**Mr. Ryan Dunn:** I don't follow your logic, sir.

**Mr. Gilles Bisson:** Serge is lying? He says you were the point person reviewing all the documents, so he's not telling the truth; you are?

**Mr. Ryan Dunn:** When we talk about review, we talk about reviewing documents for issues management purposes—

**Le Président (M. Shafiq Qaadri):** Merci, monsieur Bisson. Je passe la parole à M. Delaney du gouvernement; 20 minutes.

**Mr. Bob Delaney:** Thank you very much, Chair. Okay, Ryan, I want to start by very briefly discussing records. A few weeks ago, this committee passed a motion that asked for all documents related to the gas plant relocations from the Ministry of Energy up until August of this year, 2013. We've received confirmation from the ministry and the minister's office that they've begun searching the records of nearly 300 current and former staff, and that would include your old records and your email account.

I'm not sure if you're aware, but on March 5, the government members of this committee moved a motion



directing a government-wide search of all documents related to the relocations of the Oakville and Mississauga power plants. That motion would have required all government ministries, ministers' offices, Cabinet Office, the Premier's office and the OPA to conduct a search. The opposition members at the time voted that motion down. Had that motion passed, the energy documents that I've heard my colleagues across ask for would have been provided to them months ago. Before I get on with this, I just thought that was important to get on the record.

I'd like to start by going back to the spring of 2012, when the estimates committee moved a motion asking for documents related to the two gas plants. As we're well aware, at the time negotiations were ongoing with the proponents of both the Oakville and Mississauga power plants. In response to the motion, Minister Bentley at the time wrote to the committee explaining that these documents were subject to solicitor-client privilege and litigation privilege. He did warn in his letter that these documents were highly commercially sensitive and cautioned the committee that their release would impact ongoing negotiations. Could you then speak to some of the issues raised by Mr. Bentley to the estimates committee?

**Mr. Ryan Dunn:** From what I recall, the minister was grappling with two very important points. He was trying to respect the will of the committee while at the same time protecting the interests of Ontarians by not releasing the documents while the negotiation was going on.

**Mr. Bob Delaney:** All right. So we'll consider, then, what was going on at that time, something that you've begun to explain. The opposition was asking for commercially sensitive documents and asking at that time that they be made public prior to the conclusion of the agreements.

As we all know, the commitment to cancel the Mississauga plant was made by all three parties during the 2011 election, and shortly after being re-elected, this government announced its intention to relocate the facility. That decision, the decision to relocate, caused the commencement of civil proceedings in both the province of Ontario and the state of New York. These lawsuits, as well as confidential settlement negotiations, were ongoing when Mr. Leone moved his motion at estimates. For a reminder, that motion was for all correspondence from the Minister of Energy, Ministry of Energy and the Ontario Power Authority.

In terms of Oakville, we also know that all three parties had supported the cancellation of that plant. While no formal litigation resulted from the government's decision, the province and TransCanada Energy had been engaged in formal arbitration and confidential settlement discussions.

Numerous independent witnesses have come here and testified that had these documents been made public before the deals were finalized, it would have greatly jeopardized the province's negotiating position. The Auditor General in particular—the former Auditor

General, Jim McCarter—told us that he would have been reluctant to put this type of information in the hands of the parties on the other side at the time. He likened it to not wanting to tip your hand in a game of cards.

Do some of these expressions of concern mirror some of the concerns that you yourself had?

**Mr. Ryan Dunn:** Again, I don't think I was in the position to have concerns. I was simply a legislative assistant. I'm not a lawyer. I'm not a parliamentary expert. I was not involved with the policy or decision-making. I think that question would be better posed to decision-makers such as Minister Bentley.

**Mr. Bob Delaney:** Ryan, how many years have you been in the workforce?

**Mr. Ryan Dunn:** Six.

**Mr. Bob Delaney:** Then you're not a very senior person, are you?

**Mr. Ryan Dunn:** No, sir.

**Mr. Bob Delaney:** Andrew Forgione isn't a very senior person, is he?

**Mr. Ryan Dunn:** No, sir.

**Mr. Bob Delaney:** Jesse Kulendran isn't a very senior person.

**Mr. Ryan Dunn:** I can't speak to Ms. Kulendran's work history. I don't know it.

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**Mr. Bob Delaney:** That's fine. I just wanted to ask that.

To your knowledge, to use Mr. Tabuns's words, there was no "large-scale destruction of documents" on a systematic basis?

**Mr. Ryan Dunn:** Again, I can't speak to my colleagues' email practices. I can only speak to my email practices.

**Mr. Bob Delaney:** Okay. When Minister Bentley testified before the committee, he told us—again, you told us that it was not a matter of if but when the documents would be released. Despite the allegations that there was an attempt to keep these documents hidden, emails and testimony at this committee have shown that wasn't true at all. In fact, as soon as the Mississauga relocation deal was finalized and all legal matters had been settled—July 10, 2012—the minister directed the ministry to release to the committee all correspondence related to the Mississauga facility that responded to the motion, except those records that were subject to solicitor-client privilege. Does that square with your recollection?

**Mr. Ryan Dunn:** Yes.

**Mr. Bob Delaney:** If the minister had been trying to hide the documents, why would he have asked for them to be released the moment the settlement was reached?

**Mr. Ryan Dunn:** Again, I believe the minister told us that it was never a matter of if; it was always a matter of when. The instructions that we received were that as soon as the negotiations had completed, he wanted the documents to go out.

**Mr. Bob Delaney:** All right. Let's talk a little bit about some of the attempts by the government to reach a



negotiated solution with the opposition parties regarding these sensitive documents, and the allegations made against then-Minister Bentley. As outlined in a January 2013 transition memo, these attempts were, of course, clearly unsuccessful. The memo says, “The government made several offers to the opposition to resolve the matter, but all were rejected. The opposition refused to engage in any meaningful negotiations.”

What offers were made to work with the opposition? Do you know?

**Mr. Ryan Dunn:** I don’t know specifically. Again, it was the government House leader’s office that was liaising with the opposition parties. I was simply being kept up to speed on what they would have been doing, through the government House leader’s office, through Kevin Spafford, who I believe has come before this committee. I can’t speak with any certainty to what was said in those meetings.

**Mr. Bob Delaney:** Something that maybe you can speak with some degree of authority on—earlier, Mr. Fedeli asked you about an email that you had sent to Deputy Imbrogno. I’m looking at the email. It’s dated Tuesday, June 5, 2012; it’s written in the evening. It refers to a motion made the same day—if I recall, it was made during the afternoon—by MPP Leone, who said, “I move that the Chair write a letter to the Speaker as well as report to the Legislature and to draw its attention to a possible matter of contempt and a breach of the ancient parliamentary right of privilege....” The same evening, you asked the deputy what the implications were. That sounds more like due diligence that a legislative assistant would do on behalf of his minister, correct?

**Mr. Ryan Dunn:** That is correct.

**Mr. Bob Delaney:** That was really what you were trying to do in sending the email, right?

**Mr. Ryan Dunn:** Correct.

**Mr. Bob Delaney:** Okay.

**Mr. Ryan Dunn:** It’s my job, as the legislative assistant, to get the information that the minister needs.

**Mr. Bob Delaney:** It’s not as if matters of contempt had been raised often enough that you knew them by heart, correct?

**Mr. Ryan Dunn:** Sir, I’m not a lawyer, nor am I a parliamentary expert.

**Mr. Bob Delaney:** Well, I join you in not being a lawyer.

During the past six months, the opposition has suggested that they actually would have been quite willing to engage in a compromise solution, but they’ve suggested they weren’t going to put taxpayers at risk.

To go back to September 18, 2012, in a letter to the former Premier, the official opposition House leader wrote, “It is our position that the documents should be tabled in the Legislature, unedited and unredacted.” As a reminder, the Oakville deal was not yet finalized at the time that he sent this letter. Might this reinforce the fact that, from your vantage point, the opposition weren’t out, at that time, to protect the public interest? Could you comment on that?

**Mr. Ryan Dunn:** I can’t speak to what the opposition were or were not thinking. What I do know is that Minister Bentley did not want to release the documents while the negotiations were going on, and what I do know is that I guess during the summer months the government House leader’s office was trying to work with the opposition to come up with a solution or an agreement.

**Mr. Bob Delaney:** Did you have a good working rapport with then-Minister Bentley?

**Mr. Ryan Dunn:** I did.

**Mr. Bob Delaney:** Did you know him reasonably well as an individual?

**Mr. Ryan Dunn:** He’s a man of integrity.

**Mr. Bob Delaney:** Do you believe that Chris Bentley would have put himself and his family through all of the things that he subsequently endured if he didn’t truly believe he was acting in the public interest as a minister of the crown?

**Mr. Ryan Dunn:** There’s not a day that I worked for Minister Bentley that I do not believe he was working in the public interest. He was always trying to do what was best for the people of Ontario.

**Mr. Bob Delaney:** To go back to the spring and the summer of 2012, could you describe your role with respect to the production of documents to the estimates committee?

**Mr. Ryan Dunn:** As I stated, my job was to review copies of the OPA’s documents and copies of the ministry’s documents for issues management purposes, so that we could prepare the minister to answer any questions in the House or in the media.

**Mr. Bob Delaney:** In other words, to provide a heads-up on any potential issues that you saw in a first pass at the documents?

**Mr. Ryan Dunn:** Correct.

**Mr. Bob Delaney:** It strikes me that it’s completely appropriate for staff that you’ve hired for that purpose to review documents before they’re disclosed in response to a committee motion or a freedom-of-information request; correct?

**Mr. Ryan Dunn:** That was explained to me, when I signed up, as a duty of a legislative assistant.

**Mr. Bob Delaney:** Let’s go back to before all of this started. In May 2011, Dr. Ann Cavoukian stated: “Our position has consistently been that a system designed to give ministers and senior officials a ‘heads-up’ about the disclosure of potentially controversial records is acceptable. These processes or systems are designed to ensure the timely notice and communication of relevant details of the request and the related records, in order to assist the minister or senior officials when responding to questions in the Legislative Assembly or from the media or members of the public.” Does that sound about right?

**Mr. Ryan Dunn:** That’s correct.

**Mr. Bob Delaney:** I’d just like to chat with you about a Ministry of Energy staff person, Jesse Kulendran, whom you did work with, who helped compile documents for the estimates committee and attended a meeting at the OPA last summer regarding the motion. As



you're aware, this meeting has come under scrutiny. Ms. Kulendran has since testified that she did nothing inappropriate, and the Deputy Minister of Energy agrees with that.

Deputy Imbrogno told the committee, "I never directed Jesse to go to the OPA and ask them to exclude documents. I never myself directed the OPA to exclude any documents. When I talked to Jesse about the allegations, she told me ... that she did not direct the OPA. I have no reason to not believe what Jesse has" said.

Further, "Secretary Wallace launched an investigation into the allegations ... and confirmed that there's no evidence that Ms. Kulendran acted inappropriately."

What seems to be clear is that there was some miscommunication at some level, but ultimately that the OPA was responsible for its own search and provided the responsive documents to the committee. Would you agree with that, and is there anything you can add to it?

**Mr. Ryan Dunn:** I was not at the meeting at the OPA between Ms. Kulendran and the officials at the OPA. I believe that you've said that the deputy has testified and Jesse has testified. I have no reason not to believe sworn testimony.

**Mr. Bob Delaney:** As various people have told us, that type of search had little, if any, precedent. Over and above the some 56,000 documents received from the minister, ministry and the OPA, it appeared that either errors or omissions were made, and a number of document releases occurred. While we've heard some suggestions that these additional document releases occurred because of some sort of wild and mysterious cover-up, the testimony from the secretary of cabinet, the ministry staff and the OPA has consistently stated that the searches were done in good faith. From your vantage point, would you agree with that?

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**Mr. Ryan Dunn:** I would agree with that.

**Mr. Bob Delaney:** Okay. When Deputy Imbrogno testified before the committee, he described in some detail the time and the resources that went into searching for and identifying and compiling the documents responsive to the estimates committee motion. What he said was this: "We basically shut the ministry down for that search period.... A lot of the time and effort was spent with policy legal staff going through and determining what is responsive and what is non-responsive." It "took a lot of time and effort, but the ministry basically worked 24/7, and that was the priority for the ministry."

From your vantage point, does that accurately encapsulate what went on in the ministry while they were responding to the estimates committee motion?

**Mr. Ryan Dunn:** I was not involved with the ministry's activities to prepare any of those documents or do a search. So, again, if the deputy has sworn to that at this committee, I would have to believe him.

**Mr. Bob Delaney:** Okay. Let's move on to the costing and relocation of the two gas plants. May I ask who provided your office with the information on costing, in particular the sunk costs for Oakville, which was the \$40-

million number, and the \$190-million number for Mississauga?

**Mr. Ryan Dunn:** I wasn't involved with, I guess, the calculation or the communication of the costs. So I would have seen, I guess, a draft of a news release from a ministry official.

**Mr. Bob Delaney:** Okay. Would the ministry, or the minister's office, ever release a figure like that without it either coming from, or at least being fact-checked by, the OPA?

**Mr. Ryan Dunn:** Again, I wasn't part of the communications or the calculations of the costs. We would routinely rely on information from all of our agencies to provide us with accurate information.

**Mr. Bob Delaney:** I keep forgetting you're not a senior guy.

**Mr. Victor Fedeli:** Only his title is "senior guy."

**Mr. Bob Delaney:** As a Liberal staff person, then, let's assume that you pay close attention to the policies and commitments of the other parties. Would you do that?

**Mr. Ryan Dunn:** Sorry, sir?

**Mr. Bob Delaney:** As a staff person, I'm assuming that you would have paid close attention to the policies and commitments of the other two parties, right?

**Mr. Ryan Dunn:** I would have, as a legislative assistant, paid attention to what was said in the House.

**Mr. Bob Delaney:** Almost every witness before this committee has confirmed that there were clear commitments by all three parties to cancel or to relocate the two plants. For example, my own mayor, Hazel McCallion, said, "The impression that was certainly given beyond a doubt ... I think all parties would have cancelled it," referring to the plant. During his testimony here at the committee, the mayor of Oakville, Rob Burton, told the committee that he "won promises from all parties to stop the proposed power plant." And we have transcripts and campaign literature and robocall scripts that highlight the commitments made by the opposition to cancel or move the plants.

So, then, in your role, you would have been fully aware that all three parties had promised to either cancel or relocate the Mississauga and/or Oakville power plants, correct?

**Mr. Ryan Dunn:** Correct.

**Mr. Bob Delaney:** Okay.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** Chair, I think I'm going to stop there for this round.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Fedeli, 10 minutes.

**Mr. Victor Fedeli:** Thank you, Chair. Would you just repeat your title that you held during the time that you were at the Ministry of Energy?

**Mr. Ryan Dunn:** I'd be happy to go through the timeline again, Mr. Fedeli.

**Mr. Victor Fedeli:** No, no. Just the last title—your last title.



**Mr. Ryan Dunn:** I would have been a policy adviser for conservation and smart grid.

**Mr. Victor Fedeli:** What about the one before that?

**Mr. Ryan Dunn:** I would have been a legislative assistant.

**Mr. Victor Fedeli:** How come it says “senior policy adviser” on your email?

**Mr. Ryan Dunn:** I don’t know if there’s a difference between a policy adviser and a senior policy adviser.

**Mr. Victor Fedeli:** Mr. Delaney seemed to think there was some importance of not having you a senior person, but your own title says “senior policy adviser.”

**Mr. Ryan Dunn:** I understand that, as I’ve testified before this—

**Mr. Victor Fedeli:** I just wanted to have a little fun there for a moment with Mr. Delaney.

Back in document 10—

**Mr. Ryan Dunn:** Sir, may I just say something quickly?

**Mr. Victor Fedeli:** You can say something when you answer—you can answer my question about document 10. There’s a GHLO meeting on Vapour that you were invited to. Can you tell us what that meeting would be?

**Mr. Ryan Dunn:** Sir, I have two packages in front of me. Could you—

**Mr. Victor Fedeli:** One’s not mine. I only have the ones that say “Liberal gas plant scandal document.”

**Mr. Ryan Dunn:** Sorry, what page am I going to, sir?

**Mr. Victor Fedeli:** Document 10. It’s probably about fifth or sixth from the back.

What was discussed at the September 12 meeting on Vapour? Well, that’s Oakville. So we’re going to talk for a few minutes about Oakville. Was that the first time that the \$40-million messaging was hatched?

**Mr. Ryan Dunn:** Sir, I just have to find the document, sir.

**Mr. Victor Fedeli:** It’s right near the back. It’s the fifth-last page. So you have a meeting now, September 9—

**Mr. Ryan Dunn:** Sorry, number 6?

**Mr. Victor Fedeli:** Document 10, the fifth-last page. The meeting on Vapour: Was that the first time that the \$40-million messaging was hatched? Was that where that came from, at this meeting, at that point in time?

**Mr. Ryan Dunn:** I don’t recall.

**Mr. Victor Fedeli:** Okay. So you don’t recall where the \$40 million was hatched. At that meeting—why don’t we go to document 11, then, the next page. You’re sending this to David Phillips and Kevin Spafford and you’re asking them to “feel free to make edits.” Did you write this letter?

**Mr. Ryan Dunn:** I did not write this letter.

**Mr. Victor Fedeli:** But you’re inviting them to make edits?

**Mr. Ryan Dunn:** That is correct.

**Mr. Victor Fedeli:** It’s not a letter you wrote?

**Mr. Ryan Dunn:** That is not a letter that I—

**Mr. Victor Fedeli:** Again, you’re the only one who’s got this letter in their file. You’re suggesting at another

date, September 24, a couple of hours later now—you’re sending it to somebody new—“Use this version.” Were there changes made between the 9:31 in the morning version and the 11:35 version?

**Mr. Gilles Bisson:** Let me save you the trouble; he doesn’t remember.

**Mr. Victor Fedeli:** He doesn’t remember? Okay.

In the last paragraph, it says, “I have been advised by ministry staff that the documents attached to this letter comprise all documents.” Who would have written this letter that said you have all the documents? I know the minister signed it, so let’s just move on to who wrote it.

**Mr. Ryan Dunn:** I don’t know who wrote it.

**Mr. Victor Fedeli:** How many staff would there be in the minister’s office that could have written that letter under the minister’s signature, and obviously sent it to you—

**Mr. Ryan Dunn:** Sir—

**Mr. Victor Fedeli:** I hope in the new email batch that we get, Chair, we’re going to see who sent that, because obviously Mr. Dunn can’t remember anything as simple as who sent you this letter, which really is the letter that’s at the crux of all of this.

**Mr. Ryan Dunn:** Sir, I believe that the way it works between a minister’s office and the ministry is that often-times they will prepare minister’s letters—

**Mr. Victor Fedeli:** Who’s “they”?

**Mr. Ryan Dunn:** The ministry will prepare a letter for the minister.

**Mr. Victor Fedeli:** So you think it came over from the deputy minister?

**Mr. Ryan Dunn:** Again, I don’t know who wrote this. I’m simply saying that it’s often the case that the ministry will prepare letters for the minister to sign.

**Mr. Victor Fedeli:** So you’re the senior policy adviser and this is probably the biggest thing to hit that ministry—some would claim it has been the biggest to hit this ministry ever—and you don’t know anything?

**Mr. Ryan Dunn:** I don’t know who wrote that letter.

**Mr. Victor Fedeli:** You didn’t know who wrote the letter before. You didn’t know what the meeting I asked you about was. You didn’t know what the other meeting I asked you about was.

We have a lot of deleted emails that we’ve recovered from Chris Morley, and he’s blaming Minister Bentley for a leak to the media. And by other emails that we’ve had between these operatives, there’s no trust between the Premier’s office and the minister, who, in our opinion, and many others in this room would share it, became the sacrificial lamb for this whole thing. Obviously, Chris Morley and the minister were adversaries. How would you have described the resentment that the minister had for the Premier’s office, then, over this activity? You were there; you were in the room.

**Mr. Ryan Dunn:** I don’t know. I was not the minister.

**Mr. Victor Fedeli:** I understand you weren’t the minister. You’re the senior policy guy.

**Mr. Ryan Dunn:** But the minister would not have communicated with me his thoughts or feelings with regard to the Premier's office.

**Mr. Victor Fedeli:** So we just have to leave it up to the email that we have between Morley and others blaming the minister for all this fiasco?

**Mr. Ryan Dunn:** I believe if you want to know what was thought or said, you should ask the authors of the email.

**Mr. Victor Fedeli:** Yes, we don't get any answers from them either.

So do you believe, then, in that letter that you forwarded, that all documents responsive to the committee's requests were turned over?

**Mr. Ryan Dunn:** What I knew at the time is that the Ontario Power Authority and the ministry had conducted a search, that they had found records, that they did the search in good faith—

**Mr. Victor Fedeli:** Well, no, they didn't. Look, let's not even try that. We have sworn testimony that they were told to pull the documents out; 20,000 documents had been withheld. We got the new batch two weeks later. Then they were in good faith, after coming clean with 20,000 documents. So don't even try that with us here.

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**Mr. Ryan Dunn:** I believe that there's testimony from the—

**Mr. Victor Fedeli:** Sworn testimony.

**Mr. Ryan Dunn:** —sworn testimony from the—

**Mr. Victor Fedeli:** So who's lying, then? Which one of the two is lying?

**Mr. Ryan Dunn:** Sorry, let me go back.

**Mr. Victor Fedeli:** Which one of them is lying?

**Mr. Ryan Dunn:** There's sworn testimony from the deputy, and I believe there's sworn—

**Mr. Victor Fedeli:** Which one of them is lying? I'm asking you a question.

**Mr. Ryan Dunn:** I'm trying to answer your previous question, sir. There was sworn testimony from the Deputy Minister of Energy and I believe that there was sworn testimony from the CEO of the Ontario Power Authority that the searches were done in good faith.

**Mr. Victor Fedeli:** And we have sworn testimony from people at the Ontario Power Authority, including the vice-president, who swear under oath that they were ordered to take documents out. So which one of them, in your opinion, then, is lying?

**Mr. Ryan Dunn:** I was not part of any of those conversations, so I can't comment on them.

**Mr. Victor Fedeli:** You didn't pull any documents out yourself, you're saying?

**Mr. Ryan Dunn:** I did not instruct anybody to remove any documents.

**Mr. Victor Fedeli:** No, no. Did you pull out any documents yourself?

**Mr. Ryan Dunn:** No.

**Mr. Victor Fedeli:** You didn't touch the documents?

**Mr. Ryan Dunn:** I would have had photocopies of the Ontario Power Authority's documents and photocopies of the ministry's documents. The one time that I went down to the Ontario Power Authority, I had a lawyer in the room, a lawyer present who watched us—

**Mr. Victor Fedeli:** And who was that lawyer?

**Mr. Ryan Dunn:** As I've told the NDP, I can't recall the lawyer.

**Mr. Victor Fedeli:** I missed part of the NDP—did you ever take notes?

**Mr. Ryan Dunn:** Notes in general or notes—

**Mr. Victor Fedeli:** Notes in general.

**Mr. Ryan Dunn:** Yes, I would take notes in general.

**Mr. Victor Fedeli:** Excuse me for a second. I'm just going to address the—Mr. Bisson, did you go down that line at all about turning over notebooks? I missed part of your testimony.

**Mr. Gilles Bisson:** No, you should go there.

**Mr. Victor Fedeli:** I'm going there, then. Will you turn over all of your written notes and your notebooks that had anything to do with the gas plant scandal?

**Mr. Ryan Dunn:** Sir, when I left government in February 2013, I left all of my records there. I don't know—

**Mr. Victor Fedeli:** Where's "there"?

**Mr. Ryan Dunn:** I would have given electronic records to Andrew Forgione.

**Mr. Victor Fedeli:** Oh, great. We've already had him here. That was unproductive.

What about your books?

**Mr. Ryan Dunn:** I would have left my books at the office.

**Mr. Victor Fedeli:** Just in the desk?

**Mr. Ryan Dunn:** On top of, I guess, the table behind my desk.

**Mr. Victor Fedeli:** So the credenza?

**Mr. Ryan Dunn:** Sure, we can—

**Mr. Victor Fedeli:** That's where you left your book? You just left your books there? And who has that office today?

**Mr. Ryan Dunn:** I don't know.

**Mr. Victor Fedeli:** So perhaps we'll come to some sort of an understanding on how we can get our hands on those books and those notes, then. It seems you can't recall those meetings that you held on Vapour. Maybe your notes will give us some direction on what actually happened, whether that was the meeting where the \$40-million messaging was hatched. The other meeting on Mississauga—maybe that's where the scheme to say that it was \$180 million was hatched.

Do you know anything about the \$5 million that the Auditor General told us about?

**Mr. Ryan Dunn:** Sorry, the \$5 million?

**Mr. Victor Fedeli:** On Mississauga, the minister first said that it was \$180 million. Then the finance minister bumped it up by \$10 million to \$190 million. But they both conveniently forgot to tell us about the missing \$5-million contract. Do you know anything about that contract?



**Mr. Ryan Dunn:** I was alerted—are you referring to Keele Valley, sir?

**Mr. Victor Fedeli:** Yes.

**Mr. Ryan Dunn:** I would have been made aware of the Keele Valley issue the day after the minister, I believe, released the documents—

**Mr. Victor Fedeli:** So why didn't anybody come clean back then? Why did it have to take us and our party to disclose that there's \$5 million more in a—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Dunn, this is the first we've heard mention of you taking notes. Were you taking notes regularly at meetings throughout your time at the ministry?

**Mr. Ryan Dunn:** I would.

**Mr. Peter Tabuns:** And when you were asked to provide responsive documents as part of the request from this committee, did you review those notebooks?

**Mr. Ryan Dunn:** I believe, in the instructions that we were given from the FOI coordinator, it was electronic communications.

**Mr. Peter Tabuns:** I don't think so—"electronic or otherwise." You, in fact, didn't check your notebooks?

**Mr. Ryan Dunn:** I believe that the instructions that I was given by the ministry were to ask my colleagues to search their emails.

**Mr. Peter Tabuns:** Would we have found responsive documents in your notebooks?

**Mr. Ryan Dunn:** I don't know.

**Mr. Peter Tabuns:** Were you not at meetings where these matters were discussed and you were taking notes?

**Mr. Ryan Dunn:** Again, I was not involved in the policy or decision-making on the Oakville and Mississauga gas plants during the dates of the original motion from the Standing Committee on Estimates.

**Mr. Peter Tabuns:** That doesn't say to me that there would not have been anything that was responsive, because I'm going to assume that since you were there through the time that the Mississauga plant was cancelled—were you not?

**Mr. Ryan Dunn:** What dates are we talking about?

**Mr. Peter Tabuns:** We're talking about the fall of 2011.

**Mr. Ryan Dunn:** In the fall of 2011, I was at the ministry.

**Mr. Peter Tabuns:** You were at the ministry?

**Mr. Ryan Dunn:** In the minister's office at the Ministry of Energy.

**Mr. Peter Tabuns:** Sorry, you were in the minister's office from February 2011, correct?

**Mr. Ryan Dunn:** In February 2011 up until June 2011, I would have been in the—probably July 2011 would be a more accurate date. I was in the minister's office, and that would have been Minister Brad Duguid.

**Mr. Peter Tabuns:** Yes, that's right.

**Mr. Ryan Dunn:** Then I would have taken a three-month leave of absence for the campaign, and then I

would have returned in mid-October 2011. I was asked to become the legislative assistant to Minister Bentley.

**Mr. Peter Tabuns:** Okay. So you were certainly there in the lead-up to the election when, in fact, the Mississauga plant was a subject of great concern in the minister's office. Decks were prepared for the minister. Did you see any of those decks in May-June 2011?

**Mr. Ryan Dunn:** I believe I was asked to review one of those decks.

**Mr. Peter Tabuns:** Okay. So in fact you would have been a note-taker in a period that was of great interest to us. You never checked those notes at all?

**Mr. Ryan Dunn:** Sorry, which notes are you referring to, sir?

**Mr. Peter Tabuns:** You say that you were a note-taker. You just were saying to Mr. Fedeli that you left stacks of notebooks on the table behind your desk. I'm assuming that you kept track of what was going on day to day.

**Mr. Ryan Dunn:** I'd write on decks; I'd write on notebooks. But again, I wasn't involved with the policy or decision-making at that time. I think you're trying to get to the search, and when we were asked to do the search, we were asked to check emails.

**Mr. Peter Tabuns:** Well, my recollection is, records in electronic form or otherwise. Others can check for me; perhaps the legislative researcher can produce the motion. But I'm quite certain it wasn't just electronic records.

Going on to another matter, Craig MacLennan testified that ministry legal counsel told the minister not to turn over documents. He couldn't remember who it was. Do you have a different recollection of who was advising the minister to not turn over documents?

**Mr. Ryan Dunn:** I don't recall being a part of any meetings with any lawyers with the minister.

**Mr. Peter Tabuns:** Do you know who the final decision-maker was about not turning over the documents?

**Mr. Ryan Dunn:** I believe that Minister Bentley has come forward to this committee and testified to the fact that he made the ultimate decision and that he was trying to balance two, I guess, very difficult principles. From my perspective, from what I can recall, the instructions that we received from the minister were that it wasn't a question of if; it was just a matter of when.

**Mr. Peter Tabuns:** Just out of curiosity, when you were involved in the election campaign, at any point were you drawn into a discussion of the Mississauga decision?

**Mr. Ryan Dunn:** No.

**Mr. Peter Tabuns:** Okay. When did you first become aware of the possibility of cancelling the Mississauga gas plant?

**Mr. Ryan Dunn:** I recall being made aware of the Mississauga gas plant being cancelled the day after the papers ran the story on the announcement that if the Liberal government was elected, they would commit to, I

guess, cancelling or relocating—I can't recall the specific term.

**Mr. Peter Tabuns:** Some clarity, then: Just a few minutes ago I asked you about your role in the minister's office prior to the election and asked you if you'd seen documents. You remembered seeing a deck related to the cancellation of the plant.

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**Mr. Ryan Dunn:** No, I don't believe it was the cancellation of the plant. I believe it was a deck referring to some of the local issues and local concerns that were going on. It was more of a status update.

**Mr. Peter Tabuns:** And no comment at all, no sense at all that your minister and ministry were entrusted to shutting down this plant at that time?

**Mr. Ryan Dunn:** Again, I don't make the decisions, sir—

**Mr. Peter Tabuns:** No, I understand that, but you do observe what's going on, and you are asked to be aware of what's going in the wider world. Is that not true?

**Mr. Ryan Dunn:** I'm asked to serve the minister. I'm asked to provide him with information.

**Mr. Peter Tabuns:** And—no, go ahead.

**Mr. Gilles Bisson:** No, finish.

**Mr. Peter Tabuns:** No, I'll turn it over to you.

**Mr. Gilles Bisson:** It's really not credible. You're saying to us that you're in the minister's office through this entire period, that you don't recall any conversation having to do with strategies having to do with cancellation. You say that you were not party to any discussion about strategies or withholding—it flies in the face of all of the evidence that we have. So I'll ask you the question one more time: Did you have any part to do with discussions—and not the decision; the decision at the end would have been maybe above your pay grade—but was there any participation on your part when it comes to discussions around how you were going to release or not release the documents to the estimates committee?

**Mr. Ryan Dunn:** Again, I believe that the ministry and the OPA were responsible for releasing those.

**Mr. Gilles Bisson:** Were you part of any discussion in regard to how you were going to release those documents? Yes or no?

**Mr. Ryan Dunn:** As I testified, I believe that the OPA and the ministry were responsible—

**Mr. Gilles Bisson:** Were you part of any discussion about how to release those documents? Yes or no?

**Mr. Ryan Dunn:** I can't recall being a part—

**Mr. Gilles Bisson:** The evidence says the opposite. There's all kinds of information here within emails that point to your involvement. You don't recall any of it?

**Mr. Ryan Dunn:** Sir, if you point me to the emails, I'd be happy to talk about them.

**Mr. Gilles Bisson:** I've only got about three minutes. I'm saying there's enough here that has your paw prints on it when it comes to your involvement. Was there anybody in the minister's office, on the minister's staff,

who was involved in any discussions about the non-release of the documents to the estimates committee?

**Mr. Ryan Dunn:** I believe the discussions that we were having, and I think if you're referring to some documents in here, it was how we would amend the motion—

**Mr. Gilles Bisson:** Who made the decision not to give those documents?

**Mr. Ryan Dunn:** Again, I believe the minister has testified that he was wrestling with two principles, in that he didn't want to release the documents while negotiations—

**Mr. Gilles Bisson:** So it was solely the minister that handled this whole thing?

**Mr. Ryan Dunn:** The minister makes the decisions, sir.

**Mr. Gilles Bisson:** So you're throwing him under the bus?

**Mr. Ryan Dunn:** I'm not throwing the minister under the bus.

**Mr. Peter Tabuns:** You were pretty clearly involved with all the strategizing around how to press back on not producing the documentation.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Peter Tabuns:** You asked for an email—document 1 in our package—a discussion about the whole matter of how we leverage on this. May I just ask: With this, you refer to information being burned. "If we do not burn the rest of the Mississauga materials...." That's on page 3. What do you mean?

**Mr. Ryan Dunn:** I believe the term "burn" was "release," and that's what we would have said: to release the documents.

**Mr. Peter Tabuns:** Going back, then, you seem to be deeply involved in discussing how to—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you very much, Chair. Chair, just before I get into talking with Mr. Dunn, I noted with interest the previous two rounds of questioning by my colleagues. I remind them that the original estimates motion was for correspondence from the Minister of Energy, the Ministry of Energy and the OPA. And with regard to many of the questions asked, in a recent meeting, the committee has already passed that motion. The committee is already getting those records discussed, and the committee could have had them in March.

Let's go back here to questioning. Just a few questions on record-keeping. Even Premier McGuinty has talked about the lack of adequate training for staff in understanding the Archives and Recordkeeping Act. In his June 7 response to the Information and Privacy Commissioner's report, he stated, "I agree with the commissioner that despite some efforts, we did not devote adequate resources and attention to ensuring all government staff in all ministries and in the Premier's office were fully informed of their responsibilities. This inadequate training made it difficult for staff government-wide to both under-



stand their responsibilities regarding the preservation of public records and to exercise sound judgment in determining which records must be kept as public records and which can be eliminated.”

Would you agree with Mr. McGuinty that there was a lack of formal training with respect to—for people like you, in your capacity—on how to properly manage your records?

**Mr. Ryan Dunn:** That is correct.

**Mr. Bob Delaney:** Okay. But that being said, it was apparent to staff—I think all staff—that they weren’t required to keep every single record, every single transaction, every unit that came through their email accounts, right?

**Mr. Ryan Dunn:** I’d keep what I needed to do my job.

**Mr. Bob Delaney:** The Archives and Recordkeeping Act explains that transitory records are not required to be kept, and the Common Records Series defines these records as “records of temporary usefulness in any format or medium, created or received by a public body in carrying out its activities, having no ongoing value beyond an immediate and minor transaction or the preparation of a subsequent record.”

When we asked Secretary Wallace about his personal experience with transitory records, he told us, “From the perspective of my office and our daily email practice, a fair amount of what is provided to us, a fair amount of my routine correspondence, is essentially trivial updates or momentary information exchanges that would not be of interest to anybody in the future trying to, for policy purposes, for historic research purposes, understand the basis of current decision-making—it would be irrelevant.”

Would Secretary Wallace’s comments about transitory records make some sense to you?

**Mr. Ryan Dunn:** Yes.

**Mr. Bob Delaney:** Okay. So according to the act, there are many types of records that would fall into this transitory category. For example: duplicates, records of short-term value, intermediate records and draft documents—“draft documents” meaning things you may have typed, written, whatever, that you subsequently incorporated into a finished document. The Archives of Ontario even has a fact sheet entitled “The Fine Art of Destruction: Weeding Out Transitory Records.”

So I want to ask you in particular about duplicate records. The rules show there is no need to retain records held by another branch of government, and this includes materials prepared by Cabinet Office for a meeting with the Premier or the cabinet. I would expect a lot of what you may have received in the minister’s or the Premier’s offices were duplicates and/or materials provided to you on a “for your information” basis, correct?

**Mr. Ryan Dunn:** That is correct.

**Mr. Bob Delaney:** Anything else you wanted to add today?

**Mr. Ryan Dunn:** No.

**Mr. Bob Delaney:** Thank you very much, sir. Chair, we’re done.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, and thanks to you, Mr. Dunn, for your presence. Before we take a short recess, we have a briefing by OPA and some other issues.

Mr. Tabuns, you have a motion deferred from August 27. Would you tell me how you would like me to dispose of it?

**Mr. Peter Tabuns:** I’d like you to hold it down for one week, please.

**The Chair (Mr. Shafiq Qaadri):** I commend you on that decision. Thank you, Mr. Tabuns.

All right, we are adjourning. We have a subcommittee meeting at 4:45. Thank you.

*The committee adjourned at 1629.*

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Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 26 September 2013

# Journal des débats (Hansard)

Jeudi 26 septembre 2013

## Standing Committee on Justice Policy

Members' privileges

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 26 September 2013

Jeudi 26 septembre 2013

*The committee met at 1431 in room 151.*

## MEMBERS' PRIVILEGES

MR. BEN CHIN

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

I invite our first presenter to please come forward, live from Victoria, British Columbia, Canada, to be affirmed by our able Clerk. Welcome, Mr. Chin.

**Mr. Ben Chin:** Thank you, sir.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Hello, Mr. Chin; nice to see you.

Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Ben Chin:** I do so affirm.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Chin. Just before we begin and I offer you five minutes for your opening address, I just respectfully ask my colleagues if we might keep points of order and heckles etc.—because we have some audio challenges today.

Mr. Chin, you have five minutes to make your opening address, to be followed by questions, in turn, by each party. Please begin now.

**Mr. Ben Chin:** Thank you, Mr. Chair. I won't take the entire five minutes, but I just want to say good afternoon, and before I start, I just want to apologize for not being able to be there in person, and I want to thank you for your understanding and for making these alternate arrangements.

My name is Ben Chin. I'm the former vice-president of communications at the Ontario Power Authority. I served in that role from April 2009 to February 2011. My responsibilities included internal and external communications, corporate marketing and external relations with partners, stakeholders, government—and that includes industry and, of course, communities as well.

I served in a supporting role at the OPA, alongside my former colleagues, and I do want to say this: that from the leadership there to the newest recruits that I had the privilege of working with, I witnessed an absolute commitment to public service every day on the job and to

uphold the organization's mandate and values, and that is to help build a more sustainable and reliable electricity system on the one hand, and to do so in a way that protects ratepayers, to make the system as affordable as possible, to seek out the lowest costs, the most cost-effective solutions, in the way that we implemented government's directives and broader public policy decisions regarding the Ontario electricity system.

The organization came to life at a time when Ontario was in darker days in terms of electricity, in the early 2000s, and I think played a key role in procuring power that was necessary in helping to foster a culture of conservation in Ontario and did so working well with its partner organizations and agencies, and of course, with the men and women who actually work every day to bring power to millions of Ontarians. So I consider it an extreme privilege to have had the opportunity to work alongside very skilled, highly qualified, ethical and dedicated people at the Ontario Power Authority. I'll always take that with me.

I want to thank you also, members of the committee, for sending me documents both yesterday and today, as some time has elapsed since 2010-11, and so it was a good reminder to me of some of the things that you may ask me about. Of course, I'm happy to answer all of your questions to the best of my ability and to the best of my recollections. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Chin.

We'll begin with Mr. Tabuns of the NDP. Mr. Tabuns, the floor is yours.

**Mr. Peter Tabuns:** Mr. Chin, good to see you again.

**Mr. Ben Chin:** Good to see you as well, Mr. Tabuns.

**Mr. Peter Tabuns:** In his testimony before us, Chris Breen from TransCanada testified that he came to talk to you in April 2010 about the Oakville project. He testified he wanted help to overrule Oakville zoning requirements that would have blocked construction of the plant. Can you tell us about that first conversation?

**Mr. Ben Chin:** I can't really recall, Mr. Tabuns, exact conversations, because we had many, and I certainly can't dispute Mr. Breen's testimony in terms of the dates and meetings. He's got better notes than I do, frankly, because of my move to British Columbia, and a lot of the notes I don't have anymore.

But I can say this: that TransCanada was quite concerned about the interim bylaw and were looking for

ways—I mean, perhaps not just in that conversation, but over a number of conversations, they expressed their concern about the interim bylaw and what could be done to overcome it to complete the project.

**Mr. Peter Tabuns:** Did they feel that that interim control bylaw and the other regulations put in place by Oakville would have blocked construction of the plant or delayed it substantially?

**Mr. Ben Chin:** My recollection is that they were proposing several different remedies; for instance, appealing it or perhaps asking the government to pass legislation.

**Mr. Peter Tabuns:** What did you offer to help him with?

**Mr. Ben Chin:** There wasn't anything I could help him with on that front—I'm neither a lawyer nor a legislator—so I was just merely staying in touch with him. You have to understand that I worked very closely with Chris Breen and with TransCanada for a period of time there. We had procured a contract with TransCanada to build the Oakville generating station, and we were both trying to get social licence in the community to build, to have the project go through, and so we were dealing with each other on a daily basis, and the interim bylaw was, frankly, an obstacle to that objective. I think that my recollection is, in terms of any legal proceedings or challenges to the interim bylaw, I had no opinion on that. That was for TransCanada to decide to do, and I think that they did pursue that route, as I recollect, and then the other is that in terms of legislation that they ought to speak directly with government about that, as that is sort of above my pay grade.

**Mr. Peter Tabuns:** And who did you put them in touch with?

**Mr. Ben Chin:** I believe it would have been both the minister's office and the Premier's office.

**Mr. Peter Tabuns:** And who in the minister's office and who in the Premier's office?

**Mr. Ben Chin:** It would have been Craig MacLennan, who was the chief of staff at the time in the minister's office, and Sean Mullin in the Premier's office.

**Mr. Peter Tabuns:** Okay. Chris Breen testified that he met with Brad Duguid on or about April 19, 2010, that the minister could see the problems facing the plant and suggested that TransCanada come back to him with alternatives, including another site. Would you have any reason to believe that Mr. Breen misrepresented the minister on that?

**Mr. Ben Chin:** No.

**Mr. Peter Tabuns:** And had you heard from the minister or the ministry that they were considering this plant was so damaged it wasn't going to go forward at that point?

**Mr. Ben Chin:** I don't know that it was quite that strong. I do think that they were asking us for advice and TransCanada for advice on alternatives.

**Mr. Peter Tabuns:** Even as early as April 2010?

**Mr. Ben Chin:** Yes, I believe that's correct.

**Mr. Peter Tabuns:** And the contract had only been signed about seven months previously?

**Mr. Ben Chin:** That's right.

**Mr. Peter Tabuns:** That's quite a sharp change in seven months. What changed?

**Mr. Ben Chin:** I don't know, because, again, those decisions did not involve me. I think that at the Ontario Power Authority itself, there was quite a bit of soul-searching, obviously, before the RFP was awarded: "Do we really need this plant?" We knew how difficult a challenge it would be, and so we really did our homework in terms of what the assumptions were. That didn't really involve me, other than that I was present with much more qualified people than me—from planning, for instance—to look at what demands would be in Ontario and so on and whether this contract should be awarded.

In the spring, I don't believe, if my recollections are correct, that we had changed that opinion at the Ontario Power Authority. But I think government was quite leery of the project to begin with, and there were several rounds of questions of: "Is this really necessary? Must it go there? Can it go somewhere else? What are the alternatives? What's an alternative to a power generating station?"—and so on.

**Mr. Peter Tabuns:** Mr. Breen testified that he was talking to you almost every day, and you've said this just a few moments ago. With regard to this plant, what was the thread of the discussions in the spring of 2010?

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**Mr. Ben Chin:** I think that the main theme of the discussions was how do we get it built, really—between our relationship, between TransCanada and the Ontario Power Authority? We are the contracted parties and we want to see it fulfilled. So there are a number of challenges. The community group in Oakville, the mayor and council in Oakville, the provincial government itself, all of them have differing views and, really, I think that I would characterize it as, none of them were as committed as we were at the time to get the plant built.

**Mr. Peter Tabuns:** Were you drawn into the discussions with the Premier's office and TransCanada over the summer of 2010, given your connections to TransCanada and the Premier's office?

**Mr. Ben Chin:** At times I was, but not always. Keep in mind that it's a complicated and difficult situation when you are representing an agency in the electricity sector, because you have government on the one hand and you have the contractor on the other hand. Again, our objective is to see the contract fulfilled, to have the project built. So you're working towards that and trying to mitigate risks and doubts about it on all sides. So from that perspective, yes, I would have been engaged in some of the conversations, but not all.

**Mr. Peter Tabuns:** Were you made aware of the negotiations going on between Jamison Steeve and Sean Mullin in the summer of 2010?

**Mr. Ben Chin:** Between just the two of them or—

**Mr. Peter Tabuns:** Yes, the two of them and TransCanada.

**Mr. Ben Chin:** I became aware of that, yes.



**Mr. Peter Tabuns:** About when were you made aware of that?

**Mr. Ben Chin:** I think I was aware of the meeting in which TransCanada—and I don't recall the date, but when TransCanada requested legislative action to the government. And then the other meeting that I'm aware of, of course, is the one where, I believe, Mr. Alex Pourbaix was at the meeting and met with Sean Mullin and Jamison Steeve before meeting with Minister Duguid.

**Mr. Peter Tabuns:** Okay. In document 10 that you should have—

**Mr. Ben Chin:** I'm not sure which one you're referring to, Mr. Tabuns. Is it the—

**Mr. Peter Tabuns:** You should have two packages.

**Mr. Ben Chin:** Yes. They're not numbered on my side. So—

**Mr. Peter Tabuns:** Pardon?

**Mr. Ben Chin:** The documents aren't numbered, so I don't know which one document 10 is.

**Mr. Peter Tabuns:** Actually, they are; the upper right-hand corner as you flip through.

**Mr. Ben Chin:** Is it page 10? I've got page numbers.

**Mr. Peter Tabuns:** No. There's a number that's circled in the upper right-hand corner as you go through the documents. They're handwritten.

*Interjections.*

**Mr. Ben Chin:** They're handwritten. Okay, I see it. There's one. Sorry. Let me flip through as quickly as I can. There's three—

**Mr. Victor Fedeli:** It was put in backwards, Peter. It's on the inside.

**Mr. Peter Tabuns:** Okay.

**Mr. Ben Chin:** There it is. I've got it.

**Mr. Peter Tabuns:** You've got it. Good. Thank you.

On page 2 of that document, you said to Breen, "You knew this plant was never going to be built," and this would have been in the summer of 2010. You had come to the conclusion at that point that this plant was never going to be built. Why?

**Mr. Ben Chin:** I'm sorry. You're going to have to direct me to that because that's kind of news to me.

**Mr. Peter Tabuns:** Okay. If you've got "solicitor-client privileged" at the top of the page—

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** —and you see a series of bullet points, the second group of bullet points, the bottom bullet point—

**Mr. Ben Chin:** Okay.

**Mr. Peter Tabuns:** "I said to Breen, 'You do a lot of business in Ontario. You knew this plant was never going to be built. Surely we can negotiate the difference in our position.'"

**Mr. Ben Chin:** That's sort of not the summer. That is pretty close to the cancellation period. That would have been around the time of their meeting with the minister and with the Premier's office.

**Mr. Peter Tabuns:** So that would have been in September?

**Mr. Ben Chin:** That's right, somewhere in September-October.

**Mr. Peter Tabuns:** So you say at this point, "You knew the plant was never going to be built." What did you mean?

**Mr. Ben Chin:** Well, I think that both of us came to realize by the fall that it didn't look like the plant was going to go ahead. I think as late as the summer, my recollection is that we were still working to see if we could get the plant built, but it was becoming increasingly clear that there were too many difficulties in getting this done, and largely that government may well cancel the project or say that the project shouldn't go forward.

**Mr. Peter Tabuns:** And the other difficulty—

**Mr. Ben Chin:** It was kind of speculative on our part but just sort of gauging the air.

**Mr. Peter Tabuns:** That's quite a strong statement to make to someone you've got a contract with.

**Mr. Ben Chin:** Yes, and I don't know whether I said that or he said that or we just simply agreed to that. You know, I think—

**Mr. Peter Tabuns:** Well, all I have is the recording of your words.

**Mr. Ben Chin:** Yes, that's right, so I'm not going to dispute that, but I do recall the conversation, and I also do recall a conversation—and I don't know whether Chris Breen's notes would back this up, but saying, "Look, there could be an elegant solution to this where we walk away and mutually terminate the contract in favour of another project." You know, I think that that notion was kind of presented at that time.

**Mr. Peter Tabuns:** Did the rest of the Ontario Power Authority know that the plant was dead at this point?

**Mr. Ben Chin:** I think we were all—I mean, we may have all had different personal opinions about the fate of the plant at that time, but we were all opening our eyes to the very distinct possibility of it not going forward.

**Mr. Peter Tabuns:** Okay. Mid-September to October 7 was a really critical time for negotiations with TransCanada.

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** Who was pressing to ensure that TransCanada was made whole? Whose idea was this?

**Mr. Ben Chin:** It would have come originally from TransCanada—sorry. Mr. Tabuns, can I go back to your earlier question? Because something just occurs to me. What changed for me in terms of looking at the prospects of the plant getting built was that our planning assumptions somewhat changed somewhere near the end of the summer. I think in one of the questions of, can the plant be moved to a different location in Oakville, and what would that entail, the answer from our planners came back as yes, a 300-megawatt plant could be built elsewhere, and I think everybody in government took notice: "Well, how does a 900-megawatt plant turn into a 300-megawatt plant?"

As soon as that question came back, I began to think, "I'm not sure this is going to get built," because the rationale for it was the plant—you know, you never build



a plant to do one thing. You build it to do four different things. Three of those things are based on provincial demand as opposed to local demand. Local demand is still growing, but that can be addressed through transmission which is planned for later in the decade, and we can just move that project up.

As soon as that explanation started to come in, I realized that, really, there was no argument to make that this plant was required for coal closure or for provincial reliability. It was simply for local reliability, and the plant was bigger than what was needed at that moment.

**Mr. Peter Tabuns:** Much bigger.

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** Much bigger.

**Mr. Ben Chin:** Well, 600 megawatts bigger than originally planned.

**Mr. Peter Tabuns:** On page 2, you say, "My understanding was that they agreed TC should be kept whole."

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** Can you confirm that the "they" was Jamison and Mullin?

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** Okay. And can you recall how and when you were told this by Sean Mullin?

**Mr. Ben Chin:** Not the exact details of it, but I believe it was on the phone, and my understanding of that conversation was that TransCanada indicated that they were willing to mutually agree to terminate the contract, to not go forward, in return for something, a different project which would keep them whole or close to whole, so mostly whole. That was conveyed to me, and my understanding was that that is the desirable outcome of the negotiation.

Now, that leaves a lot of room, because there's different interpretations of what that is exactly.

**Mr. Peter Tabuns:** Yes, there are very different interpretations.

**Mr. Ben Chin:** Yes.

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**Mr. Peter Tabuns:** Who instructed the OPA that they should agree with TransCanada to make them whole? Why would the OPA do this for a plant? Obviously, the plant wasn't going to go forward. It had all kinds of legal obstacles. It wasn't going to get an override of municipal regulation. Given that the OPA had written contracts to protect the public from substantial claims, why did this come to be the outcome?

**Mr. Ben Chin:** You know, I'm not a lawyer, and Mr. Lyle probably can answer that better from a legal standpoint about article 14. But my understanding of it, from receiving briefings at the time, was that we were sort of stepping outside the contract now because mutual agreement to terminate is not really contemplated in the contract.

I have to say that personally I felt—for what it's worth, my opinions on things—that it was not unfair, that you have investors, a shareholder-driven company that has a legal contract to build, and plans are changing. It is not circumstances overriding the project so much as a

decision in government. At the time, they absolutely have recourse to sue, regardless of article 14. If we can arrange to say, "Fine. We're not doing this project, but there's a project of similar size and anticipated financial value. Does that work for you?"—that seemed like a fair way to terminate this contract.

**Mr. Peter Tabuns:** Well, section 14 was the section that protected the Ontario Power Authority and rate-payers from a claim for lost profits. Who directed the OPA to abandon that legal defence, that contractual defence?

**Mr. Ben Chin:** I don't know that anybody explicitly asked to abandon it. I think that, as I recall the legal opinion, it was that we are now—our understanding was that government was asking us to make sure that we keep them whole, or close to whole, that it's better to pay for electrons than to just make a payment. Our own view of it, legally, the legal opinion, I believe, was that, "Well, we're sort of stepping outside the contract here, because we're talking about a mutual agreement to terminate."

So if you and I are sitting across the table from each other, and you require something to mutually agree to terminate the contract, we're both agreeing to terminate it, so let's try to work towards that. After all, that future project will have to be built. There are costs to that. So if we can just fold in these costs into that plant, then there's really no additional costs for the future plant.

**Mr. Peter Tabuns:** I'll put an alternative scenario to you: You did your long-term energy planning. You realized that there was no need for a plant anymore because, in fact, consumption had dropped dramatically; Mississauga: something like 20% in one year. So you were looking for a saw-off with them so you wouldn't have to fight in court, in the press, in public, for a plant that, even when it was commissioned, it was doubtful whether it was needed.

**Mr. Ben Chin:** I would disagree with your last point. I think that, when it was commissioned, we didn't have doubts. We turned out to be wrong, in hindsight. But the organization didn't have doubts about its need or else we wouldn't have proceeded with it.

I think, yes, that's one way to read it. I think it's really a matter of being fair to the contractor. And when you look at the context of electricity history in Ontario, we, at that point, were just sort of 10 years past when the market had been opened up to free market pricing—

**The Chair (Mr. Shafiq Qadri):** One minute.

**Mr. Ben Chin:** —and then that had been reversed and investors were jittery and not coming to Ontario. So you want to avoid that situation—

**Mr. Peter Tabuns:** Just to clarify before I leave my time with you: So it was the Premier's office that made you aware that TransCanada was to be kept whole, and that direction came down to the OPA to abandon their defence in article 14.

**Mr. Ben Chin:** Yes. I don't quite agree with the second part of it, but my understanding, and my recollection, of that conversation with the Premier's office was that it was desirable to keep TransCanada whole, or close to



whole, and at least pursue the possibility of finding a way to a mutual agreement on termination of contract.

**Mr. Peter Tabuns:** Thank you.

**Mr. Ben Chin:** That's my recollection. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

To the government side: Mr. Delaney—your 20 minutes.

**Mr. Bob Delaney:** Thank you very much, Chair. Hello, Ben. Good to see you again.

**Mr. Ben Chin:** How are you, Mr. Delaney? Good to see you as well.

**Mr. Bob Delaney:** Hope you're still finding time for a little hockey.

**Mr. Ben Chin:** Not a lot of time in my present job, unfortunately.

**Mr. Bob Delaney:** Okay. So I want to start by asking you a few questions about some of the factors that led to the decision to relocate the Oakville power plant. I'm going to go back a little bit. When he appeared before the committee, Minister Duguid said that a big part of the decision was a result of the strong local opposition to the plant. Testimony before the committee has shown that there were serious issues with the siting of the plant, including an already overtaxed airshed, the lack of a buffer zone—particularly in Oakville—to ensure the safety of residents, and the close proximity to homes and a school. There was, as I know you know, a group of local advocates who, along with city council, had worked very hard to advocate against the plant. They didn't just reach out—the advocates, that is—to the government, but also to the other two parties, securing, as I understand, commitments from both the NDP and the PCs that they, too, would cancel the plant.

So, at the time, you were the VP of communications at the OPA. I assume you would have kept track of some of the opposition commitments with regard to Oakville?

**Mr. Ben Chin:** Yes, that's absolutely the case as you've described it. I guess I would say that the Ontario Power Authority and TransCanada were about the only people who wanted to build the plant at that time.

**Mr. Bob Delaney:** Okay, you've saved me reading a few quotes into the record, then. Another factor that contributed to the decision to relocate Oakville, of course, was the changing energy needs. The committee has heard from a number of witnesses who said that when the long-term energy plan was updated in the summer of 2010, it became clear, as a result of declining industrial demands and better-than-expected conservation, that energy demands had actually decreased and the plant's need was no longer as imminent as originally anticipated. Does that ring a bell?

**Mr. Ben Chin:** Yes, it absolutely rings a bell.

**Mr. Bob Delaney:** Okay. Just again, in the OPA board minutes we had received from October 10, there is this passage in it: "When the need for this plant was first identified four years ago, there were higher demand projections for electricity in the" province. "Since then, changes in demand and supply—including more than

8,000 megawatts of new, cleaner power and successful conservation efforts—have made it clear" that the plant, referring to the Oakville gas generating plant, was no longer required.

Could you elaborate a little bit in more detail as to how changing energy needs contributed to the decision to relocate the plant?

**Mr. Ben Chin:** Yes, I'd be pleased to do that. I want to start by saying that one of the things that I was proudest of at the Ontario Power Authority and working there was the planning department. It has strong leadership, great experience and very qualified people. Planners in Ontario—really, what they do is they travel into the future. Because, you know, infrastructure takes three years, five years or, in the case of nuclear, much longer to build. So you have to go project into the future and think about how the economy is doing, what kind of appliances do people have, how do people live their lives? You start to plan based on all of those things.

I think that four years before the cancellation, when it was first—through the IPSP, the integrated power system plan, there was a plan for a southwest GTA generator. The planners prudently thought that there are four factors here, among which is, really, a local area problem. The community is growing much faster. The per capita usage of electricity is much higher than in the rest of the province, and yet there's antiquated infrastructure, and the design of the infrastructure sort of traps electrons in the wrong way that doesn't [inaudible] the area reliable.

We heard from people that run industries in the south part of Mississauga about brownouts and constantly rotating brownouts and the unreliability of power. So that was one major reason. The other was the provincial government's commitment to close coal plants by 2014. That puts pressure on the system, and you need replacement power. Then there were two other factors that were needed for west Toronto and for just sort of a generator with peaking ability for the rest of the province. I remember being briefed on that—that, you know, it's quite smart to have one project knock off or tick off four boxes in terms of what you need for the province.

So at the Ontario Power Authority, you're thinking purely from a reliability perspective. You're projecting into the future and you're thinking about, "When we spend ratepayers' money, how many boxes can we tick off when we enter into a large-size contract?"

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As it turned out, no one could guess the full extent of the global economic downturn and its impact on Ontario, which was particularly hard-hit. Even our conservation figures had jumped ahead of what we had predicted. It was far more successful than the Ontario Power Authority had forecasted. Of course, there was the Green Energy Act, which wasn't contemplated earlier, which had brought on thousands of megawatts of power into the system. So all of a sudden, things started to change, from a provincial outlook.

Also, I believe that the planners told me that they went ahead and started to look at other ways of meeting coal



closure. Those were being identified, and all of a sudden the need to have a 900-megawatt plant shrank to a 300-megawatt plant [*inaudible*] could have been only for local area reliability, which can also be addressed through transmission.

**Mr. Bob Delaney:** You reminded me that, had we had that local generating capacity 10 years ago, that particular area—where I happen to live, by the way—would have recovered a lot quicker from the August 2003 blackout. That's a good point you made.

On June 22, 2011, you were interviewed by lawyers from the Ministry of the Attorney General about the Oakville relocation. Just for the benefit of everyone here, our committee, of course, has a copy of these notes. When asked about the changing energy demands—I'll remind you what you said at the time: "We didn't need the Oakville plant to close coal by 2014. The job that this plant was supposed to do has now gone down by two thirds. The government said, 'Wait a minute. Why do we need this plant? Can't we do something else to meet the other demands for power?'" Yes, we could build transmission lines, and that would satisfy the need for power in that community"—referring to Oakville, Milton and perhaps western Mississauga.

I'm wondering if you could perhaps expand a little more on the transmission solution. We know from OPA testimony that a transmission upgrade was required in that area regardless of whether a power plant was built or not, but by speeding up the upgrade, it of course meant that an actual generating station would no longer be needed. Could you elaborate on that?

**Mr. Ben Chin:** Yes. A lot of the problems in the southwest GTA—it's this growing community with high electricity use and, as I said, antiquated infrastructure. If you look at the map, it has kind of a dead end. Electrons sort of get trapped on one end, and it is not a very reliable system.

The immediate fix for that, while fulfilling those three other more province-wide goals leading to coal closure, was a power generating station, and then, I believe—as I recollect, Mr. Delaney, something like 10 years after that, about a decade later, there would still be a requirement to upgrade those old, antiquated transmission lines and to build new ones, as well.

As I said to Mr. Tabuns, there have been many questions from a government sensitive to community reaction, setbacks, the airshed and so on—constant questions about the need for the plant: "What are the alternatives?" This was really the first time, in late summer, when we began to realize at the Ontario Power Authority that, actually, there is another answer: We overestimated the need for power based on four years ago. Yes, the transmission project, if we moved it up by a decade, would take care of the local area reliability, which, in fact, is the only box we really need to tick at this moment. That was a changing dynamic, an answer that changed over a period of time.

**Mr. Bob Delaney:** A lot of that transmission infrastructure was the original transmission structure built after the war.

**Mr. Ben Chin:** That's correct.

**Mr. Bob Delaney:** Going back to local opposition to that plan: In an attempt to slow down construction, Oakville town council had enacted some bylaws. Despite all of the local opposition, one of the things that you said earlier is that both the OPA and TransCanada still wanted to build a plant, if not that plant.

**Mr. Ben Chin:** Right.

**Mr. Bob Delaney:** From the documents that we've received and the testimony here at the committee, TransCanada was fully aware that the province could override Oakville's bylaws using legislation, right?

**Mr. Ben Chin:** Yes.

**Mr. Bob Delaney:** Okay. TCE had also appealed these bylaws with the Ontario Municipal Board. Chris Breen was here from TCE. We asked him about this. He testified, and we asked him what actions TCE had taken to try to overrule the bylaws, and he said—I'll use his words: "We were already before two different courts with what looks like about four actions, and we were before the OMB, the Ontario Municipal Board, with two appeals. We had a contractual obligation. It was very cleanly spelled out in black and white that that was our responsibility: 'You have to go through every possible channel to deliver on your obligations in this contract.' And we would have done that."

Could you speak to us in a bit more detail about the actions TransCanada Energy was taking to overrule Oakville's municipal bylaws?

**Mr. Ben Chin:** Yes. I mean, they had a number of options, and so they were exploring all of them, and the legal channel of overturning the interim—the control bylaw—was one of them, rising all the way up to receiving help, some sort of legislative support, from the provincial government. So they were certainly doing that.

For my part, in the work I did with Chris Breen, one of the challenges when you work at a contracting agency and you're working with a private sector partner, and in order to obtain social licence to build infrastructure, is that you can have things fall between the cracks and not respond in a uniform way. We are two different organizations, after all. We can have different objectives, and unless we're on the same page, you don't want a situation where you give the city of Oakville two different answers. So they always kept me informed and kept us informed at the Ontario Power Authority of the steps that they were doing to try to satisfy the contract, and we kept note of it.

I wouldn't go into the community without phoning Chris first and saying, "Look, I'm going to have to go in and meet with the mayor. Are there any messages you want us to deliver on your behalf? What are the ways we can work together here?" and to make sure that we were working together for that common purpose of fulfilling the contract.



**Mr. Bob Delaney:** Okay. Yes, Rob Burton actually confirmed a lot of what you said when he was here.

Chris Breen had confirmed to the committee that, based on the legal opinions that they'd received, TCE was confident that they were on solid ground and that they would have won their cases had they gone to court. Ultimately, as we know, the plant was relocated, but for the purposes of this question, let's just assume for a moment that that decision wasn't made and the province had not intervened. When we asked Chris Breen about that, he testified that TCE would have kept fighting, and ultimately, he feels, they would have been successful in overturning Oakville's municipal bylaws. What he said is, "We had ... the Ontario Superior Court and Divisional Court, and we would have taken this to whatever court was required" to get this through. He later went on to say, "What I would say is that TransCanada were confident that they were going to eventually get to build the project on the Ford lands, but clearly we had some work to do at the Ontario Municipal Board and the various courts that I had mentioned earlier."

So we'll get to the point. As we saw with Mississauga, just as soon as the OMB or another court had overruled the bylaws, it meant that Oakville would have had no other option but to issue building permits to the company, as happened in Mississauga. So in that scenario, what I want you to comment on is the assumption that as soon as these permits were issued, TransCanada could have begun construction and that they had a contractual obligation to get their shovels in the ground just as soon as possible. Would you comment on that?

**Mr. Ben Chin:** I think that that's correct, Mr. Delaney. I think that TransCanada was very confident in their legal advice. Their legal advice looked sound to our legal team because we were consulted—you know, shown where they were going to go. I think that history would show that in most cases like this, whether it's a power plant or some other piece of vital infrastructure, there are strong arguments on the side of upholding the contract.

When I look back on the summer of 2010, as I was saying to Mr. Tabuns, what spelled the possible end, the potential end of the plant being built was the changing assumption on need and the size of the plant and what else could be done. That planning change was much more of a wakeup call than any court challenge or interim bylaw or control bylaw, because I do think that quite capable lawyers looking at this had a very strong opinion that all of that could be overcome. It was just a matter of time.

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**Mr. Bob Delaney:** Yes. So, then, to quickly encapsulate, the land had been zoned industrial by Oakville, TCE had legally acquired the land and had a contract to build, and despite the fact that Ontario didn't need the electricity and there were other solutions to provide for local needs such as transmission, had the company overturned Oakville's bylaws, they could have, and arguably would have, built a very large generating station when there

really wasn't the need for the electricity and, failing some action by the province, any other option to stop the plant would have been much more costly. Correct?

**Mr. Ben Chin:** That is correct. I think that any organization—you know, when you set out to build something and you have procured it, you are proud of the contract that you have signed for cost-effective power, and you start to move ahead, there is a momentum in getting it built. I would characterize it as—I saw my job as doing everything I could in 2010 to ensure that the project was completed, and I think that Chris Breen's objective would have been exactly the same. And all through the summer, we were trying to convince government that there was a need for the plant and the project had to be built, and what changed were the assumptions about need, and that was—you know, had that not happened, if there wasn't a change in the forecast in terms of re-adjusting for the times and for a new energy plan, if that hadn't happened, I'm quite confident that we would have found ourselves on the way to getting that plant built.

**Mr. Bob Delaney:** So if one could say that "sunk costs" were a layman's term, which I'm not sure is true, the sunk costs would have been much, much higher had construction started?

**Mr. Ben Chin:** Absolutely.

**Mr. Bob Delaney:** Okay. Let's talk a little bit about some of the negotiations, then, on the Oakville relocation, because there were essentially two options: cancel it and get nothing for the money that you've spent, or relocate the plant and ultimately get some electricity. The decision to move the plant would have been made by the OPA, the Minister of Energy and the Premier on October 7, 2010, with, as I recall, the support of both opposition parties; correct?

**Mr. Ben Chin:** Yes, that's my recollection as well.

**Mr. Bob Delaney:** From what we've been told about that decision, throughout the negotiations, both sides were working very hard to relocate the plant as opposed to just ripping up the contract and walking away. Now, the prevailing opinion from witnesses at this committee is that the best path forward after the decision was made not to move ahead with the Oakville plant was to negotiate an alternative site with TransCanada, correct?

**Mr. Ben Chin:** That's correct. Not to oversimplify it, but the way we saw it was, you hire a contractor to do a renovation in your house—that renovation is no longer required, but maybe there's a project somewhere else, of equal value, that the contractor can fulfill. You're just trying to treat your contractor fairly for the amount of time and planning he has put into doing the original renovation.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** Okay. In the remaining minute, then, I don't really have much time to go into a lot else, but I'd like to talk about what Deputy Minister of Energy David Lindsay said when he said, "Paying costs and getting no electricity would not be a very good business decision." Could you comment on that in the time remaining?



**Mr. Ben Chin:** Yes. I think that was everybody's view: that if you are paying money, you might as well get—instead of paying money out for no electrons, it's better to have a project that is anticipated and planned for in the future. If it can fulfill the financial needs of that company or the anticipated financial value of the original project, then that is a much better solution, so that that plant gets built, the first one gets cancelled, and there are limited liabilities.

**Mr. Bob Delaney:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

To the PC side: Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair.

**Mr. Victor Fedeli:** Good morning—good afternoon, Mr. Chin. How are you today?

**Mr. Ben Chin:** It's afternoon here now, Mr. Fedeli. Thank you.

**Mr. Victor Fedeli:** Good afternoon.

**Mr. Ben Chin:** Good afternoon.

**Mr. Victor Fedeli:** Thanks for participating today. I quite appreciate it.

You had answered a couple of times to Mr. Tabuns, and these were the first several questions I was going to ask about as well. I just want to hear you say it again. It's about being kept whole, that indeed the Premier's office had agreed that TCE should be kept whole. Am I correct in—

**Mr. Ben Chin:** Yes, whole or close to whole. That is my recollection of it.

**Mr. Victor Fedeli:** I was just looking at the notes. You may not have seen them. Actually, I sent them to you in document 1, page 11 of 13—not that you need to refer to it, but it's there. It's the John Kelly—

**Mr. Ben Chin:** Yes.

**Mr. Victor Fedeli:** That whole thing. This is your discussion with them. I understand it was done via teleconference as well, that you had said to them, "Chin confirmed that he understood that the Premier's office had agreed that TCE should be kept whole."

**Mr. Ben Chin:** Yes, that's my recollection. I wonder now whether I misunderstood, but that is my recollection and, in fact, that is what happened afterwards.

**Mr. Victor Fedeli:** Exactly; that is what happened afterwards. I'm still on document 1, on page 8 of 13. There's a piece in the middle—again, it talks about this "whole" thing, but I'm going to switch to the net revenue stream now. It says: "If you have a contract with the government and you have sunk costs in it, you want to be kept whole in terms of your revenues from that contract." It looks like somebody is asking you: "Does that mean a net revenue stream over 20 years?" and it appears that you would have said, "That's right."

**Mr. Ben Chin:** Yes.

**Mr. Victor Fedeli:** I just don't know much about that side of it. Take a second and talk about that, please.

**Mr. Ben Chin:** In the contracting for power with a generator, the contract, let's say, is for 20 years. There are different periods for different kinds of generation, but

if you have a contract for 20 years, there is an anticipated revenue for that 20 years. The beauty of engaging in a contract with the private sector is that in the building of that plant, they assume all the risks, so the ratepayers and the taxpayers have no risk in the building of that plant. But once it's built, they're going to be paid a sum of money for providing that power for a period of time. The anticipated financial value—and two parties can have arguments about what that number is, but there is some number there and so you try to look at the footprint of that deal, and in this case you look for another planned piece of infrastructure which would have a similar financial footprint.

**Mr. Victor Fedeli:** In document 2 it gets into the letter from October 6, October 7—I'll call it "the letter."

**Mr. Ben Chin:** Oh, right.

**Mr. Victor Fedeli:** This is "the letter." Were you involved in that?

**Mr. Ben Chin:** Yes, I was certainly witnessing it, but it was mostly led from a legal perspective. It's where communications takes a back seat to lawyers, who actually know what they're talking about. But I was assisting in it, and it went back and forth a few times as it was altered to meet the needs of both sides.

**Mr. Victor Fedeli:** Who would have approved that before it went to the board, specifically, in this case? Would you know?

**Mr. Ben Chin:** It would have been Colin Andersen who approved it and took it into the board.

**Mr. Victor Fedeli:** I realize—because it is written in pretty much legalese—there are some different versions where they've sort of softened or hardened it up a little here or put a few little words here and there. Would somebody like yourself have been involved—not in politicizing it, but covering off the consumer side rather than the legal side?

**Mr. Ben Chin:** Yes, and I think that the CEO, Colin Andersen, was very much concerned about that too. You can sort of see how, through the different iterations, it lands on "anticipated financial value" as opposed to the word "compensation," which is more open-ended.

**Mr. Victor Fedeli:** Yes.

**Mr. Ben Chin:** That kind of thing is a way of trying to lock down the ultimate price and to protect the ratepayers.

**Mr. Victor Fedeli:** You were at the board meeting on October 7, according to the members of staff in attendance at the OPA board meeting on October 7, where it says that the board reviewed the terms of a draft letter to cease all work and acknowledged that TransCanada Energy Ltd. was entitled to compensation.

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At that particular time, did anybody—there were maybe a dozen people there. Did anybody ask, "What kind of compensation, what scope are we talking about," back on October 7? Did anybody ask, "What's the volume of this?" or "What's the nature of the dough?"

**Mr. Ben Chin:** To be absolutely honest with you, Mr. Fedeli, I don't recall the conversation at the board. I



don't know whether that was because I was constantly going in and out of the board meeting with others, looking at different drafts of the letter or what was going on at the time. I do remember the board being very firm on, "What does this letter mean?" and, "What kind of liability does this open the Ontario Power Authority up to?" and doing all of this protective work around that. But I don't really recall the particulars or the specifics.

**Mr. Victor Fedeli:** That's fair. I'm going to jump to document 3, page 3 of 15. This is a Matt Galloway—it looks like an interview at the CBC, right?

**Mr. Ben Chin:** Yes.

**Mr. Victor Fedeli:** It's a Metro Morning interview. This is October 8, so the next day. Matt Galloway says, "The estimate is that it's going to cost about \$1 billion to cancel this deal; does that seem reasonable to you?" This is Oakville only that I'm talking about. You answer, "A billion dollars or more was the cost of the plant, and of course we honour our contracts."

He says, "So how much is it going to cost to cancel the contract?" You say, "I think it's premature to put a price tag on it."

At that time, what would you have thought in your own mind—before I get to some documents that are more specific.

**Mr. Ben Chin:** I think that these answers reflect what I was thinking at the time. If, in the long-term energy plan, you have a piece of infrastructure with a net revenue stream, a total anticipated financial value, of a billion dollars somewhere else—Nanticoke, Lambton, Kitchener-Waterloo, wherever that may be, because there were several more generating stations that were in the plant. And we don't know, really, until people sharpen their pencils and sit down, which is why I'm saying it's premature. Let's say one of them is exactly \$1 billion and TransCanada agrees that the Oakville plant is \$1 billion in value over 20 years and you can simply transfer the contract over; then there is no additional cost, if it's one-for-one. However, if negotiations go a different way and it's \$1.2 billion and \$1 billion, then there's a \$200-million difference.

That's why I'm saying it's premature. I don't know what the outcome of the negotiations will be.

**Mr. Victor Fedeli:** It's funny that you mentioned Kitchener and Nanticoke—places that are reasonably close to Oakville. I didn't hear you mention Napanee, which is considerably farther away and, as we have learned from the OPA, is going to cost, in their estimation in their presentation, an additional \$1.1 billion minus anticipated savings. At that point of the presentation, they anticipated the savings to be \$700 million, for a net cost of \$310 million. That's been presented here; it's the number that's being used. Add Mississauga onto that and we get \$585 million in cancellation costs.

I know everybody's been talking about—I think you quoted David Lindsay, or somebody did, maybe on the other side: It doesn't seem right to pay money and not get any electrons, but so far, the bill is \$585 million for no electrons. We still have the bill going forward. So it kind

of seems that there's a bit of a fly in the ointment on that theory.

**Mr. Ben Chin:** I can't comment on where the negotiations were completed because, as I said, I wasn't at the Ontario Power Authority after February 2011. But I think, to just add some context to your comment, you were either going to come in with a project that was bigger than Oakville or smaller than Oakville or the same size, right? Those were the choices. That's really up for negotiation. It's a question of what is the best outcome. You—

*Interjection.*

**Mr. Victor Fedeli:** Sorry. Pardon me.

**Mr. Ben Chin:** What is the best outcome—if your argument is that it was \$500 million more in order to get those electrons, but you're still getting electrons from the new plant.

**Mr. Victor Fedeli:** We haven't paid for those yet, though. That bill is coming, right? So we'll deal with that billion-dollar plant—let me just be mildly rude—that sole-sourced billion-dollar plant. We'll deal with that later. It's the \$585 million that we have actually acknowledged—the government has acknowledged that we've paid for no electrons so far. I appreciated your earlier comment, but let's just keep it in perspective that that isn't quite what worked out.

**Mr. Ben Chin:** Okay.

**Mr. Victor Fedeli:** OPA here presented its \$1.1 billion to cancel the contract, minus the \$700 million that they forecast. The Auditor General will come out very shortly and tell us—and we know what happened last time in Mississauga. They said it was so many dollars in savings, but the auditor balked at the formula. We asked the auditor here, under oath as well, "Will you be using the same formula to calculate the Oakville gas charges and the reverse transmission charges?" and the auditor said, "Yes, we will." So we'll see how much of that \$700 million in savings the auditor finds. But their starting number was \$1.1 billion, which is kind of interesting when you look at—we're going to go to page 6 now of 15, that same document, 6 of 15, document 3, about halfway down. Somebody—it's you, actually, saying, "Looks good, Deb" to a Deborah Langelaan—"... one suggestion, some wording changes on slide 7." But here we go—this is you writing this: "Negotiated solution does not exceed \$1.2B."

This is November 24, so about a month and a half after the cancellation. We're talking about a \$1.2 billion here. Later in the year, we come across—I don't have them in the package, but these are slide decks that we've talked about—and I apologize. We've talked about them so many times here, I didn't bring them back—that an offer was made to TransCanada to settle for \$712 million, an offer that they turned down.

Would you again say that that is the scope of what we're talking about? "Negotiated solution does not exceed \$1.2B": Is that fair, considering, a year or two later, OPA came out with that it does cost \$1.1 billion?



**Mr. Ben Chin:** Yeah, I think that it probably would have been the estimate at the time of the full value of the Oakville generating station. In other words, these are goals, really. These are optimal goals of where we need to land, and it's to not pay over and above what Oakville would have cost.

**Mr. Victor Fedeli:** The bottom line is, we keep hearing about this \$40 million in sunk costs. I don't think anybody's going to dispute the sunk-cost number. It may be off a million here or a million there, according to the auditor; we'll see. But is it safe to say—the same question I asked Colin Andersen and many, many others—and, to use Colin Andersen's words, "Everybody knew" that there would be more than sunk costs here in the cancellation of Oakville? Is that a safe sentence to suggest? I would ask you your opinion, then.

**Mr. Ben Chin:** That's a difficult question for me to answer because—

**Mr. Victor Fedeli:** Did you think it was going to cost more than sunk costs? Did you think you were going to get away with \$40 million or whatever the number—it would have been unknown at the time, but that sunk cost number?

**Mr. Ben Chin:** To be honest with you, I didn't think about, "Is it possible," because I'm not in contracting. I'm really there to help them prepare their—in this situation, prepare their slide decks and to get information—

**Mr. Victor Fedeli:** Just for a second, though. A couple of slides ago when I talked about it, this was a letter you wrote to Deborah Langelaan, that here are "some wording changes." "Negotiated solution does not exceed \$1.2B." You're in the ballpark. You're in the game here. It's not that, "I don't do those things." You were commenting on that billion-dollar number.

**Mr. Ben Chin:** Yeah, but the number doesn't come from me. It comes from people like Deborah Langelaan who know what they're talking about, who were contractors. I'm—

**Mr. Victor Fedeli:** So that number was being kicked around by professionals in the energy sector.

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**Mr. Ben Chin:** That's right. All I'm saying is that what we want is a one-for-one deal here, not a one-for-1.5 or 1.8.

**Mr. Victor Fedeli:** No, no. I understand.

**Mr. Ben Chin:** That's all I'm saying, and I think, to get back to your earlier question—

**Mr. Victor Fedeli:** Is that the one about more than sunk costs? That question?

**Mr. Ben Chin:** Yes. I think that I was only aware of the goal that we had to drive hard to try to get to a place where the only additional payments were the sunk costs. If you have a one-for-one project and sunk costs, that would be the optimal solution. I didn't know whether we would be able to get there, but that was what we were driving towards.

**Mr. Victor Fedeli:** I want you to look at page 11 of 15. Now, this one is still on doc 3. Now we're talking

about transmission, and this is from Joe Toneguzzo, and you're one of the people that—

**Mr. Ben Chin:** Yes.

**Mr. Victor Fedeli:** Somewhere in the middle there he's talking about, "total equals \$200 million." And earlier actually, on an earlier page, there was another discussion about—it's doc 3, the first page—transmission. Would you have been aware that there would be additional transmission costs? In this particular case it was Oakville versus Nanticoke.

**Mr. Ben Chin:** Right.

**Mr. Victor Fedeli:** So it's understood there are other costs other than the \$40 million in sunk costs?

**Mr. Ben Chin:** That's right, but this is, remember, the transmission project that's called for in the long-term energy plan, which is under development at this time, so this is in answer to a question, "What if we put Oakville generating station on a flatbed and moved it to Nanticoke, basically? What would be the additional costs of doing that?" The answer is, "Well, that doesn't address local area reliability in the southwest GTA; therefore, we would have to move up the plan to build transmission by a decade, and that cost is this."

**Mr. Victor Fedeli:** Go to document 4, then, if you don't mind, and I don't know the source of this document. It's just marked "Confidential," and it's called "Key Names." It's got Colin Andersen and Michael Killeavy, Michael Lyle, JoAnne Butler—these are a lot of people that we've had here—Kristin Jenkins, Jim Hinds. Ben Chin is listed in the key names.

On the next page—and I have to apologize; I know it's a bit unfair—about two thirds of the way down, it's 2010, December 10, and these are the words that are printed here. This is on page 2 of 6 now, on doc. 4. Do you see it?

**Mr. Ben Chin:** Okay.

**Mr. Victor Fedeli:** I honestly don't know who the author is, but it seems that you were involved heavily. It says, "(December 10): Sean Mullin and Ben Chin speak to Chris Breen from TCE." And this is the wording that's printed here; this is a government document: "This shows that Ben Chin is involved in the negotiations with TCE." Do you know what somebody was concerned about?

If my memory serves me correctly, this might be actually preparing for the lawsuit, so they're trying to line up who might be—but it says that you're involved in the negotiations. And the next page, "2011 (January 12): Ben Chin sends PO and MO staff TCE decks on location options to read over." It also goes on to read, "This shows MO and PO involvement in the process."

Would you say that clearly identifies that you were in negotiations with TransCanada and that you were the link between the Premier's office and the minister's office? Is that fair?

**Mr. Ben Chin:** Not quite. The—

**Mr. Victor Fedeli:** Then the next page, 4, says, "Ben will update Premier's office on a weekly basis and will be touching base with them next week after financial analysis."

**Mr. Ben Chin:** And I—



**Mr. Victor Fedeli:** I'm just asking you. I won't interrupt you. You finish off.

**Mr. Ben Chin:** I'm not going to push very hard in trying to change your mind on this, but I'm not actually proposing and fighting back on aspects of the deal.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. To Mr. Tabuns now. Thank you, Mr. Chin. Mr. Tabuns has the floor now.

**Mr. Peter Tabuns:** Mr. Chin, I was just listening to the exchange between yourself and Mr. Delaney, and if I can summarize, Ontario doesn't need this power. That was what you concluded in the long-term energy plan: large plant not needed. So why did we sign a contract for 20 years for a 900-megawatt plant that is not needed and that is not part of your plans?

**Mr. Ben Chin:** It was in the four years before that when the process began. It was part of the plans, and it was anticipated to be needed.

**Mr. Peter Tabuns:** I'm sorry. Just for clarity: In September 2010, you said, "We have a long-term energy plan. We've made it pretty clear now. We don't need this plant. We have declining power demand outside the southwest GTA. In the southwest GTA, it's flat." So if we don't need the plant, why did we sign a 20-year contract for a 900-megawatt plant in Napanee?

**Mr. Ben Chin:** Oh, in Napanee.

**Mr. Peter Tabuns:** Why did we decide to give TransCanada a 20-year contract for an unneeded generating station?

**Mr. Ben Chin:** Well, that I can't answer. I can't answer your question, because I wasn't there following February 2011. All I can say is, that long-term energy plan does call for other facilities and gas-fired generators in different parts of Ontario. It's saying that we don't need a 900-megawatt plant in Oakville to do these four things. We only need a plant there to do this one thing in terms of local area reliability, which can be done by moving up the transmission project by a decade.

That's really the extent of the information I know from having been there. Following my departure, there were discussions about where else a plant is required. I don't think that, in saying that in the long-term energy plan, they were ruling out ever building a 900-megawatt plant anywhere in the whole province. I mean, that's not the same.

**Mr. Peter Tabuns:** In Mr. Delaney's words, and you were agreeing, Ontario doesn't need this power; it wasn't the southwest GTA. We have a surplus of power generation capacity, and yet TransCanada, which took the risk of getting permitting to go forward, finds that it can't get the permits to go forward, turns to the province and says, "We want one-for-one." Instead of standing up for the interests of ratepayers, you give them a whole new plant and, as you say, Ontario doesn't need the power. Why was that the case?

**Mr. Ben Chin:** Maybe I should apologize; if that's what I said, then I'm not being clear. What we're saying is that we don't need that plant there. In all the communications materials from the time, it's clear we're saying

that we don't need the plant here; there will be other plants required elsewhere, and hopefully we can find one with the same financial value.

**Mr. Peter Tabuns:** One of the things you were also just saying is that the beauty of having a privately owned plant is that they take all the risk, but apparently that's not the case. They had risk, they ran into trouble, they came to you and said, "Bail us out. Bail us out in Oakville. Overrule the council." You did it with the York Energy Centre; that was a Conservative area. You wouldn't do it in a Liberal area.

What risk did TransCanada take when they knew that they could come to you and, either by threatening a lawsuit which would garner all kinds of negative press or just generally pushing you hard, they would have the OPA bail them out? What sort of risk did they take?

**Mr. Ben Chin:** I don't know that I would agree with that characterization of it. I'm sure that, as we have in the past, Mr. Tabuns, we could have arguments on the merits of public-private partnerships versus public-only projects.

**Mr. Peter Tabuns:** We have; that's true.

**Mr. Ben Chin:** As I recall, you prevailed in that last argument. However, there are sound arguments on all sides of that.

I would say this: It's really not a fair characterization of the situation, as they have a contract for a piece of infrastructure which, we are confident, will go ahead over time no matter how difficult the road may be. It turns out, though, in the midst of that, that we don't really have the evidence to back up going through with it.

The government makes up its mind, and so, in that situation, we need to be fair and to see that, well, there are other projects on the list that need to be done. It doesn't have to be additional money; why not just have them build that other project, so that they have a project, and continue on? It's not a question of creating a project; it's a question of doing one on the list.

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**Mr. Peter Tabuns:** I just have to note to you that, in April of that year, Chris Breen reported that TransCanada met with the minister, who said, "Start coming back to us with alternative sites." It was already very clear that there was a political problem with this plant. Set aside the need for the power or not; there were political problems and already then you were looking at ways to get out of those political problems and move this plant on. So it wasn't the change in the energy demand; it was the political problems that the minister and the party were facing in Oakville. That's what this move was about.

**Mr. Ben Chin:** Again, I don't agree with that characterization. I don't know why the government made the decision it did. I do know that we didn't have a leg to stand on when we were facing down government with all their requests for an alternative plan when our planning assumptions changed. If our planning assumptions hadn't changed, we would have continued to vigorously advise government to go through with the plant, which is what we did up until that moment. It's just that at that point we were sitting on a three-legged chair, because it didn't



make sense to argue for this anymore; our numbers had changed.

But I can tell you that up until the numbers were changed there were many requests for looking at alternative sites that we were able to push back on and say, "That's going to be too costly. That doesn't work out." They generally ended up with the conclusion: "That is not an option." We continued to press ahead, trying to get government's approval to go ahead with this.

**Mr. Peter Tabuns:** I'm going to take you back to the documents for a minute. You were good enough for me to find document 10; if you would go through and find document 12. While you're looking, document 12 is, "Notes to file," a meeting with Michael Barrack and John Finnegan on June 2, and they're from TransCanada. On the other side were Malliha Wilson, John Kelly, Halyna Perun and Carolyn Calwell. These are notes of their meetings with those representatives from TransCanada Enterprises. On page 2 of those notes—and the "2" is at the bottom of the page—have you been able to find that?

**Mr. Ben Chin:** Yes.

**Mr. Peter Tabuns:** Okay. "October 5, 2010—two meetings ... J.S."—I'm going to guess Jamison Steeve: "We are open; threat of litigation is a motivator; spoken to Colin Andersen and Ben Chin (OPA)." Can you tell us what he discussed with you at that point?

**Mr. Ben Chin:** I don't know why he would—oh, sorry. October 5?

**Mr. Peter Tabuns:** Yes, the bottom third of the page.

**Mr. Ben Chin:** I'm not sure what that refers to, but I think this is sort of why I have the recollection of understanding my conversation with the Premier's office to mean that we should do our best to keep TransCanada whole or close to whole and to make sure that there was a future project.

**Mr. Peter Tabuns:** The Premier's office was pretty clear: "Keep TransCanada whole or close to it," and the OPA took those instructions and that's the basis on which they wrote their letter to TransCanada.

**Mr. Ben Chin:** Yes. I know that it's a disputed point, but that's my recollection of it and that is, in fact, what ended up happening.

**Mr. Peter Tabuns:** Okay. On the next page, at the top—and I gather this is a second meeting on the same day—draft letters are exchanged and we have here: "OPA goes away ... Ben Chin checks with boss—comes back and they have the October 7 letter from Colin Andersen." Can you tell us about your checking in with your boss?

**Mr. Ben Chin:** Yes. That must be referring to Colin?

**Mr. Peter Tabuns:** I assume so.

**Mr. Ben Chin:** We wouldn't have had sent out a letter like that without making sure that Colin was absolutely confident with the wording.

**Mr. Peter Tabuns:** And in that wording, you'd abandoned article 14, the defence of the ratepayers section in the contract with TransCanada. Is that correct?

**Mr. Ben Chin:** That is correct in that we were seeking a mutual agreement to terminate the contract by finding

another project of close-to-anticipated financial value of OGS, basically.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you very much. I was interested in the early part of my colleague's exchanges. Just for everybody's recollection, the original call for proposals was issued by the Ministry of Energy in 2004 before there was an OPA, and it was in reaction to the big blackout of the year before.

I just want to begin by asking you a little perspective around the \$1.2-billion number. The goal was really, as we were discussing the last time, to do a one-for-one contract and to settle on the minimum amount of cost beyond the sunk cost. Do you want to walk me through that a bit?

**Mr. Ben Chin:** I can't really recall the significance of the \$1.2-billion number, but that would have come from more financially minded and contract-negotiating skilled people at the Ontario Power Authority. That document is outlining the objectives that we want to meet, that we want a one-for-one deal so that there is no additional cost to the ratepayer other than the sunk costs.

**Mr. Bob Delaney:** In other words, what it meant is that neither the ratepayer nor the taxpayer was actually going to spend anything like that number; it's just that that was the value of the contract that you were trying to negotiate a one-for-one swap with. Right?

**Mr. Ben Chin:** That's correct. Going back to my home renovation analogy—and I hope you'll forgive me for oversimplifying—if you're doing a \$60,000 kitchen renovation and you plan to do a \$60,000 garage renovation later, then you cancel your kitchen renovation and you give the contractor the \$60,000 garage renovation, you're not piling on an additional \$60,000. You're simply moving the contract from one part of the house to the other.

**Mr. Bob Delaney:** In other words, "I'll give you the \$250 for the stuff that you've started. Now let's move the work over to another room."

**Mr. Ben Chin:** That's right.

**Mr. Bob Delaney:** Good. Thank you.

Let's go back to the discussions about the pros and cons of either ripping up the agreement or renegotiating the contract. When former Deputy Minister of Energy David Lindsay was here, he said, "If you have a contract and you don't honour the contract, then the party on the other side can sue you for breach of contract and the damages will be all the benefits they were hoping to procure."

There were others who said similar things. John Kelly from the Attorney General's office said, "I'm fairly satisfied there would have been litigation," referring to if the government and the OPA had not negotiated with TransCanada on an alternative plant. The key thing that he said was, "In my experience, after 40 years of litigating, if you can avoid litigation, you should. It is a process that's fraught with risk."

In the circumstances, the best way for the province to avoid litigation was to either reach a settlement on



damages or renegotiate for a new plant with TransCanada. Could you walk us through a bit more detail on that?

**Mr. Ben Chin:** Sure. I think that the way you put it, frankly, is just common sense. You can open the door to risks that are beyond calculation, going down the court route not knowing how it will turn out and, at the same time, send a signal to investors in Ontario that there's no certainty in Ontario, that things can change overnight and that your money is not safe—sending that message at the same time when you're trying to build infrastructure. So you could really do a lot of damage doing that.

A more elegant solution, really, is to do the one-for-one swap: without adding any additional project in the queue, just to take one that is already in the queue and seeing whether that matches up with the value of the Oakville generating station and finding a solution where the company and its shareholders are happy to do the next project and Ontario ratepayers are not paying an additional cost, the company is treated fairly and a vital piece of infrastructure that the province requires is being built. That is the much preferred route to go on than to roll the dice and see how much your costs can go up.

**Mr. Bob Delaney:** So, in the end, there was no litigation because the province and TransCanada successfully negotiated in good faith on an alternative site?

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**Mr. Ben Chin:** Yes. I think all sides were pulling for that outcome. Now, I wasn't there for how that eventually happened, but I think that, all through it, my strong sense from government, from my colleagues at the Ontario Power Authority and from TransCanada was not that TransCanada wanted a briefcase of compensation to walk away with; they wanted a project of equal value.

**Mr. Bob Delaney:** Okay. There have been a few questions back and forth on some of the meetings with the Premier's office, particularly meetings that took place between TransCanada and Jamison Steeve and Sean Mullin, both of whom worked in the Premier's office in that era. Both have confirmed to this committee—which is what I want to explore with you—that they never made any direct offers or promises to TCE.

For your benefit, Jamison Steeve told us, "My discussions with TransCanada were exploratory in nature." Sean Mullin said, "We were not authorized to ... and we did not engage in" any negotiation. He also said that no "commitments had been made," and that there "was no direction from the Premier's office." They said that they had never negotiated directly with TransCanada and their role in these meetings was to listen.

My question, then: Is it appropriate, in the circumstances, for the Premier's staff to attend meetings with stakeholders on projects of this scale and scope?

**Mr. Ben Chin:** I think it's absolutely appropriate. Both of those individuals are two of the most forthright people I've ever worked with. It's absolutely crucial, at a time like this, that the Premier's office is involved and understands where the different sides are at in terms of the project.

**Mr. Bob Delaney:** In the past, in the present and in the years to come, advisers to the Premier have met, are continuing to meet and will meet with stakeholders on projects that are strategically sensitive to the government of the day. Presumably that would also happen in British Columbia.

**Mr. Ben Chin:** It would happen in every province of the country, in every provincial government, at the federal level, in North America, in Washington and every state government. I think that that is normal business practice.

**Mr. Bob Delaney:** So no one actually has to be shocked that, in fact, advisers to the Premier will attend to be the Premier's eyes and ears when they meet with a stakeholder. Okay.

Let's see. During those preliminary meetings with Sean Mullin, Jamison and CEO Alex Pourbaix, apparently there has been some suggestion around TCE's expectations to be—I'm going to use this word which has a meaning in the legal vernacular—"kept whole."

That was confirmed by Chris Breen when he testified here; he used that expression, "kept whole." He said, "This was put forward by TransCanada.... 'Our idea of being kept whole ... if you don't want us to build there—we're a contractor. Just send us to another site. We'll build on the other site.'"

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** What we've been exploring here is that the best outcome on both sides was to find that alternate project to allow TCE to recoup the value of that contract. Is that a correct interpretation? Do you want to just finish my time by expanding on it?

**Mr. Ben Chin:** Yes. That is absolutely the correct interpretation of it. I think that, in that discussion, you wouldn't say to the other party, "We're going to give you another contract of one tenth the size." Obviously, that's not going to be on. If you're going to mutually agree to terminate, you have to mutually come to terms with what both sides can live with.

**Mr. Bob Delaney:** In other words, equals for equals.

**Mr. Ben Chin:** That's right.

**Mr. Bob Delaney:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the PC side: Mr. Yakabuski?

**Mr. John Yakabuski:** Thank you very much, Mr. Chin. Thank you for joining us from Vancouver today. Or Victoria.

**Mr. Ben Chin:** Yes.

**Mr. John Yakabuski:** Regardless, thank you.

*Interjection.*

**Mr. John Yakabuski:** The other side of the country, yes.

Mr. Delaney and you have been talking about 2004, and that is when the original RFPs were sent out about a proposal to build a new gas-fired power plant in the southwestern GTA, being Oakville. This was conceived, thought about; proposals were devised, sent out; and not until 2009 was a contract signed. By that time—and from 2004 on, it was very clear to anybody who was listening that this was a problem. The local people were absolutely



opposed to it, yet the government continued to insist that the reason behind it was the need for power in that region. In fact, after the cancellation, in an interview with Matt Galloway, you continued to insist that the local need for the power was still there.

**Mr. Ben Chin:** Yes.

**Mr. John Yakabuski:** So you still insist the local need is there. You sign a contract in 2009. Within a year and a month, the decision is made not to build that plant. We now know that it's going to cost us at least \$310 million for that mistake. Offers of \$712 million were made for that mistake, to TransCanada. We won't know what the final amount is going to be until the auditor actually releases his report.

Who is responsible for that kind of a litany of incompetence to make that kind of a decision? "Go ahead with the plant. Make the decision to sign those contracts." If they had said in July 2009, "You know what? The writing is on the wall here. We're not going to go ahead," you don't sign a contract—and now you're going to build a power plant in Napanee, where you've got all kinds of additional costs because of gas transportation issues and transmission. Who's responsible for that kind of a mistake?

**Mr. Ben Chin:** I would start here, sir, that—I really can't speak to Napanee or where the dollar figures are today. I'll just take your word for it, because I'm not aware of what's been happening since I left Ontario in February 2011. But I will say this: When you look back at 2004 and the need that was identified in the southwest GTA, you could as easily ask who was responsible for ignoring the infrastructure problems in the southwest GTA, reliability issues in the southwest GTA, or the 10 years before that when no work was done on it, when—

**Mr. John Yakabuski:** I'm not asking you about that. I'm asking you about the decisions that were made at the OPA, where you worked, and with the present government. We're not looking for a history lesson, here. I've got 10 minutes here, Mr. Chin.

Who was responsible for making those decisions?

**Mr. Ben Chin:** Well, I would say that the Ontario Power Authority's planners made their forecast based on the best information they had four years before the cancellation of the plant; and that that information changed, they were alive to it, they brought it up, and that changed all of the circumstances.

Had they not discovered that their planning assumptions had changed over the four-year period, then we would have gone ahead and continued to work to build the plant in every way that we could have. But they were honest about it. They found it, and they shared that information.

**Mr. John Yakabuski:** Well, it seems that an awful lot of discussion went on about how we were going to get out of this mess once we created it, but we don't have much background on what kinds of discussions you folks might have had in avoiding this mess in the first place. Because the writing was on the wall. Just as you said to Chris Breen that you know this plant is never going to get

built—well, sometime between 2004 and 2009, you must have had some discussions that centred around that. Why would you go ahead and sign a contract in 2009, already knowing that the chances of this were becoming slim to none, and a year later, you make a decision that now foists upon the people of Ontario hundreds of millions, possibly a billion dollars, in additional costs because of that decision? Someone has to be made responsible for that.

1600

**Mr. Ben Chin:** So first of all, from 2004 to 2009, I don't think there's any discussion other than, just before, a gut check, before awarding the contract, of any information that is available to the Independent Electricity System Operator and to the Ontario Power Authority in the mid-term plan, in the long-term plan that says that that plant is not required. That plant was vitally required for all of that time. Somewhere between 2009—

**Mr. John Yakabuski:** And now it's not?

**Mr. Ben Chin:** Yes. Somewhere between 2009 and 2010, that assumption changes. Now, it would be great if we could go back and turn back the clock and have a better understanding in 2008 of what would happen in 2010, but we didn't. In hindsight, yes, it would have been great to know that in 2004 or 2007, but unfortunately we didn't know, or our planners did not know, until 2010.

**Mr. John Yakabuski:** So you expect the people of Ontario to believe that between September 2009, when the contract was signed with TransCanada, and October 7, 2010, but probably more about February or March but certainly by April 2010—that this was already the wrong decision, that the world changed that much in those few months? You expect the people of Ontario to actually believe that?

**Mr. Ben Chin:** I believe, sir, that it was more the summer of 2010 and the preparatory work going into the long-term energy plan. That's what really unearthed it because, up until then, as I've said to Mr. Tabuns and to Mr. Delaney, I saw that my primary objective was to work with TransCanada to make sure that the plant got built, so that the southwest GTA would have a vital asset in their neighbourhood to power their homes and hospitals and businesses.

When you quoted the conversation between me and Mr. Breen, that's after that fact emerges, and we realize—you know, if the government is intent on cancelling this plant, there's really not much of an argument that we can put forward because, all of a sudden, a 900-megawatt plant has shrunk to a 300-megawatt plant for that local area.

It's a difficult job of, as I said before, projecting yourself forward—using some of our best minds to project forward—to go look at future conditions. In this case, the number changed over a period of time, and that work really began—I don't know exactly when that began, but it was preparatory work for the long-term energy plan, so it would have been the summer.

**Mr. John Yakabuski:** So the government—it was based on the decision of the government to cancel the



plant; not the recommendation of the OPA, the decision of the government. So people were going along blindly, myopically determined that this was going to be built, and then the decision was made by political operatives to cancel the plant. Well, then, if that is the case, Mr. Chin, would it not be those people who should be held responsible for this decision?

**Mr. Ben Chin:** I think that at that period of time, Mr. Yakabuski, the government was constantly challenging the need for the plant and why it was being built, and they were constantly looking for alternatives, and we were strongly advising them that this was the best alternative and that this was the optimal location. We argued for that vigorously and then, all of a sudden, we had different numbers—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Ben Chin:** —which changed the game and really did not—we weren't able to vigorously argue against moving the plant after that.

**Mr. John Yakabuski:** Okay. Great. So the plan was changed. You had quite some significant involvement in this. We've seen this from the paper trail and the conversations etc.

So at the end of the day, a decision is made to build this plant in eastern Ontario, nowhere near the power need. Could you have supported that decision? You talked about Nanticoke. You talked about Cambridge. You talked about the Kitchener-Waterloo area. Building this plant in Napanee: How wrong was that?

**Mr. Ben Chin:** Well, again, I don't know what factors went into it. I'm not a planner. I would ask you to ask the head planner for the Ontario Power Authority—

**Mr. John Yakabuski:** You've offered some opinions here.

**Mr. Ben Chin:** —who knows the system inside and out.

**Mr. John Yakabuski:** Give me an opinion on that one.

**Mr. Ben Chin:** If I gave you an opinion, it would be pretty worthless compared to his and—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski, and thanks to you, Mr. Chin—

**Mr. Ben Chin:** I don't know how to answer that.

**The Chair (Mr. Shafiq Qaadri):** —for your testimony from Victoria, British Columbia.

Colleagues, that concludes the—not the witness protection but the witness questioning.

## SUBCOMMITTEE REPORT

**The Chair (Mr. Shafiq Qaadri):** We have a subcommittee report to be entered by Mr. Delaney. Go ahead.

**Mr. Bob Delaney:** Okay. Chair, your subcommittee on committee business met on Tuesday, September 24, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013, and recommends the following:

(1) That the Clerk of the committee invite Michael Lyle from the Ontario Power Authority to attend an in-camera meeting of the subcommittee on Tuesday, October 8, 2013, to:

(i) further review the confidential documents received in response to the committee's May 14, 2013, motion; and

(ii) to discuss the confidential nature of the documents received in response to the committee's August 27, 2013, motion.

(2) That the non-confidential documents the committee received from the Ministry of Finance in response to the committee's May 7, 2013, motion, form part of the committee's public record.

(3) That the non-confidential documents the committee received from the Ontario Power Authority in response to the committee's August 27, 2013, motion, form part of the committee's public record.

I move that the subcommittee report be adopted.

**The Chair (Mr. Shafiq Qaadri):** Any questions or comments before we move adoption?

**Mr. John Yakabuski:** No.

**The Chair (Mr. Shafiq Qaadri):** All those in favour? All opposed? The motion is adopted as read.

Any further business before the committee? Thank you, colleagues. The committee is adjourned.

*The committee adjourned at 1606.*







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# Official Report of Debates (Hansard)

Tuesday 1 October 2013

# Journal des débats (Hansard)

Mardi 1<sup>er</sup> octobre 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

Privilèges des députés



Chair: Shafiq Qaadri  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 1 October 2013

Mardi 1<sup>er</sup> octobre 2013*The committee met at 1502 in committee room 2.*

## MEMBERS' PRIVILEGES

**The Chair (Mr. Shafiq Qaadri):** I call the Standing Committee on Justice Policy to order. Before we hear from our first witness, we have a motion, Mr. Tabuns, which is pending consideration.

**Mr. Peter Tabuns:** I ask that it be held down until Thursday morning.

**The Chair (Mr. Shafiq Qaadri):** We will do so. Thank you, Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you for your accommodation, Chair.

## HON. JOHN MILLOY

**The Chair (Mr. Shafiq Qaadri):** The committee would like to welcome the Honourable John Milloy, government House leader and Minister of Government Services. Minister Milloy, please accept our greetings personally on behalf of the committee, as well as to your very able parliamentary assistant.

You will now be sworn in by the Clerk.

**The Clerk pro tem (Mr. Trevor Day):** Mr. Milloy, do you solemnly swear that the evidence you shall give to this committee touching on the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Hon. John Milloy:** Yes, I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Minister Milloy. I'd invite you to please begin with your opening address for five minutes, beginning now.

**Hon. John Milloy:** Thank you, Mr. Chair, and thank you to the members of the committee for inviting me.

Since being elected in 2003, I've had the privilege of serving in a number of ministerial portfolios. In the fall of 2011, I was pleased to be appointed as government House leader. I expect that this is the role that is of most interest to this committee and, in particular, the role of my office with respect to the document requests made by the estimates committee in the spring of 2012.

Between May 9 and July 11, 2012, the Minister of Energy appeared before the Standing Committee on Estimates. The Minister of Energy was repeatedly asked to answer questions relating to the Oakville and Mississauga facilities. The overwhelming majority of the ques-

tions related specifically to the ongoing outstanding legal proceedings and confidential negotiations. The committee also passed a motion requesting all correspondence relating to the cancellation of the two plants within a certain period of time.

The Minister of Energy was placed in a very difficult position: being faced with the competing interests of recognizing the committee's authority versus the need to protect the public interest in the midst of highly sensitive commercial negotiations and litigation. As the former Minister of Energy has testified, he was left with the impression that the Chair of estimates, through a number of rulings, recognized and understood these competing interests. It became clear, however, that members of the opposition did not, and on June 5, 2012, the member from Cambridge, Mr. Leone, moved a motion referring the matter to the House.

Throughout this process, the office of the Minister of Energy sought advice from my office. The advice provided was that there was a paramount right of the committee to request information, but that there was also parliamentary precedent that clearly showed an obligation on the part of the House and committees to take into consideration other competing interests.

As government House leader, I witnessed first-hand the opposition's refusal to acknowledge this parliamentary tradition and their refusal to deal with the documents in question with any sensitivity.

When directed by the Speaker, toward the end of September, to work out a solution between the House leaders, I presented a number of options to the opposition, including: a confidential briefing for the members to explain how the release of these documents at that particular time could jeopardize the outcome of negotiations; delivering the documents under seal, which would remain sealed until all outstanding commercial discussions had been settled; and setting up an ad-hoc committee consisting of one member per party, to conduct hearings in camera to determine whether, when and how the documents could be disclosed without compromising the public interest. We also sought input from the opposition if none of these solutions were satisfactory.

Unfortunately, the opposition would not engage in any way. I can recall, Mr. Chair, travelling from Kitchener to Toronto to a House leaders' meeting on Friday, September 21. After fighting through two hours of traffic to get there, the meeting lasted less than five minutes. Our suggestions were all rejected.

What is clear to me from these failed negotiations is that this was never about the release of these documents. It was about scoring cheap political points.

Before taking your questions, I would like to speak briefly about document retention in the Archives and Recordkeeping Act, which falls under the purview of the Ministry of Government Services.

There has been testimony before this committee, including from former Premier McGuinty, that in the past, staff had not received proper training with respect to their obligations under this act. We've taken a number of steps to address this and to, in a broader sense, ensure our new government is open and transparent.

Premier Wynne has made it a priority to educate staff on their responsibilities. To date, we've held an all-staff meeting in April to provide general information about record-keeping obligations; designated chiefs of staff as being accountable for proper records management in their offices; developed further mandatory training for all political staff, in consultation with the Archivist of Ontario; with the assistance of the Information and Privacy Commissioner and the Integrity Commissioner, issued a directive from the Premier with respect to the importance of proper record-keeping; and held small group training sessions with the majority of ministers' offices. This training should be completed by the end of next week. We are also producing updated records-retention schedules, to better reflect the types of records managed within the Premier's and ministers' offices.

We are also taking steps beyond just the education of political staff, including reviewing the proposed legislative changes to FIPPA and MFIPPA, revising staff training materials for OPS employees and initiating the enterprise email records management project. This project will use software to improve the management of the over one million emails produced in the OPS every day.

These actions make it clear that, as a government, we are committed to openness and transparency.

I thank you very much, and I look forward to the questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Minister Milloy, for your precision timing. We'll begin with the PC side, with Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. Good afternoon, Minister Milloy.

**Hon. John Milloy:** Good afternoon.

**Mr. Victor Fedeli:** We've handed out a series of documents. The first document you'll see is 1 of 8, and it goes all the way to page 8 of 8.

I want to talk about this walk-around. Now, if you look at document 2, it's the treasury board's submission. This is TransCanada Energy Ltd., and it's the cabinet direction, and it's the term sheet, if you will, of costs for Oakville.

I understand from this series of emails here on September 21 that they're looking for a fourth minister to sign off on Oakville. Pardon my abruptness; it says, "So far we have"—I won't refer to them with their proper

titles; I'm just reading it. "So far we have: Chan ... Jeffrey ... Takhar" and they need a fourth for cabinet.

So the series goes on. They're trying to get this person or that person, and they land on you at 1:07 in the afternoon. They started at about 11 o'clock, looking for somebody, so they found you.

I understand, from reading the rest of the email chain, that somehow you never made it there to sign the document. Is that correct?

1510

**Hon. John Milloy:** Yes—this is the first time I've seen these, so I'm just looking through.

**Mr. Victor Fedeli:** Okay. Take your time. Somewhere down there, it says, "Minister Milloy will now be leaving ... QP at 2:45 ... he can't stay any longer ... scratch his appointment as the fourth signing minister."

**Hon. John Milloy:** Yes.

**Mr. Victor Fedeli:** So you were going to be the minister who signed off on the treasury board submission. Were you briefed, then, on what you were going to be signing?

**Hon. John Milloy:** I don't recall what I was doing on September 21, 2012. As a minister, I have, from time to time, signed off on walk-arounds, as they're called. When that happens, Cabinet Office is very good at putting together a group of individuals who would outline to you exactly the details of what you're signing. I can't speculate on this. As I say, on September 21—to be honest with you, this may have been handled only at the staff level about my schedule.

**Mr. Victor Fedeli:** That's fair. So if you were going to be signing this document, then, did you say you would have had a briefing on what you would be signing?

**Hon. John Milloy:** Members of Cabinet Office, when I've done a walk-around, come with other officials, and they would have explained, as I say, in other walk-arounds, the nature of the signature. As you can understand, different walk-arounds are about different issues in terms of putting a regulation into place—they can be on all different items. But they are there to answer any questions and give you an overview of what you're signing.

**Mr. Victor Fedeli:** So what was the overview that you received on what you were signing?

**Hon. John Milloy:** I didn't sign anything, so I didn't receive an overview.

**Mr. Victor Fedeli:** So this particular document, those people, then, who did the signing—Chan, Jeffrey, Takhar, and it appears that they ended up on Hoskins. It says "Haskins" but I presume I know who they mean. They would have received a briefing, then, on what they were signing?

**Hon. John Milloy:** I can't speculate on what happened on a walk-around that I did not participate in. In general, when a walk-around happens, the Cabinet Office would present the material and explain it. If a minister—in fact, I note on some of these—has questions, there are people to answer those questions. As to what happened on this, I didn't sign it.



**Mr. Victor Fedeli:** So in general, when you are asked on a walk-around to sign a document of this substance, would you receive a briefing—generally?

**Hon. John Milloy:** What's a briefing? I mean, an explanation of the nature of what you're signing?

**Mr. Victor Fedeli:** Perhaps.

**Hon. John Milloy:** What you have to realize is that members have different levels of knowledge about walk-arounds. If it's a walk-around on an item which is a follow-up to something that has been discussed in committee and treasury board and cabinet, that is different than if it was something that you're not familiar with. Members would have different levels of knowledge.

**Mr. Victor Fedeli:** That's actually a perfect segue to my next question, then. Can you list the number of cabinet meetings you attended where the Mississauga and Oakville gas plants were discussed?

**Hon. John Milloy:** I know, from following the proceedings here, that they were discussed at a number of different cabinet meetings. I can't come up with a number off the top of my head.

**Mr. Victor Fedeli:** Would you speculate, or do you have notes or a Day-timer that would tell you that, and/or including the dates?

**Hon. John Milloy:** No, I do not. I do not keep notes of topics that are raised at cabinet.

**Mr. Victor Fedeli:** Would you receive an electronic invitation to those meetings with an agenda attached, or would that be a standard meeting?

**Hon. John Milloy:** Cabinet is held at regular times. Occasionally, they change the date, and there's an agenda that you receive with the material for cabinet. I'm sure you see ministers walking into the cabinet room with their red binder.

**Mr. Victor Fedeli:** So although you don't remember how many times or the dates of the meetings of cabinet that the gas plants—Oakville and Mississauga—would have been discussed, can you tell us what would have been discussed about Oakville and Mississauga?

**Hon. John Milloy:** I don't understand the tense of your question, "What would have been discussed."

**Mr. Victor Fedeli:** What was discussed?

**Hon. John Milloy:** I don't have any great recollection of discussions. We have a cabinet meeting every week. I understand that this committee has had access to various documents that were presented at cabinet. There were discussions at treasury board—I was not a member of treasury board—and there would have been reports to cabinet from treasury board, but nothing sticks out in my mind of discussions around those. I was Minister of Community and Social Services at the time and government House leader. I wasn't directly involved in the energy file or had a portfolio that would have touched on the energy file.

**Mr. Victor Fedeli:** There were discussions at cabinet about the Mississauga and Oakville gas plants, but nothing particular about those discussions sticks out in your mind?

**Hon. John Milloy:** That was—what?—a year and a half ago, or over the course of several years? So no, I don't—anything I can report—

**Mr. Victor Fedeli:** It was September 2012. It was a year ago.

**Hon. John Milloy:** Yes, so a year ago.

**Mr. Victor Fedeli:** It's probably one of the biggest issues that came to this sitting of the Legislature in the last two years—the gas plant scandal, as we call it on this side here. You don't recall anything in particular being discussed about the Mississauga or Oakville gas plants?

**Hon. John Milloy:** I don't have anything that comes to mind that I could share. As I say, there were numerous items discussed at cabinet. I know, from watching the proceedings here, that there were discussions that took place in cabinet, but I don't have anything to add.

**Mr. Victor Fedeli:** So you were prepared on September 21 in the middle of the afternoon—you accepted to go in and sign the TransCanada Energy submission based on the few cabinet meetings that you had?

**Hon. John Milloy:** No, not at all. I never said that. On September 21, my office indicated that I was around; that's it. At that point, as I say, I'm not even sure if I had been consulted. Possibly someone on my staff said, "Cabinet Office has a walk-around. Would you be willing to deal with it?" That's all I would know, judging on that most likely. I'm not going to speculate on what may or may not have happened if I had been included on that walk-around.

**Mr. Victor Fedeli:** So you're suggesting that you were going to be the fourth signee of this. At 1:07 you were going to sign it, but at 2:30 you were no longer available to sign this.

**Hon. John Milloy:** According to these emails, yes.

**Mr. Victor Fedeli:** But you were prepared, at 1:07, to sign this document.

**Hon. John Milloy:** No. What I just said was that I was prepared at 1:07 to meet with representatives from Cabinet Office who had an issue that they wanted to raise with me and potentially get my signature on. Ultimately, I would have decided whether to sign that walk-around.

**Mr. Victor Fedeli:** The ones who ended up signing it—Chan, Jeffrey, Takhar and I presume it's Hoskins—would have been briefed on what they signed?

**Hon. John Milloy:** I cannot speak to what happened on September 21. I can say that when someone from Cabinet Office approaches you, they provide an explanation, obviously, as to the documents that they're asking you to sign and they are ready and available for any questions.

**Mr. Victor Fedeli:** Lisa, I'm going to turn it over to you.

**The Chair (Mr. Shafiq Qaadri):** Ms. MacLeod.

**Ms. Lisa MacLeod:** Thanks very much, Mr. Fedeli, and thank you, Mr. Chair.

I appreciate you coming in, Mr. Milloy. This can't be easy for you. This has now been two years of you in the line of fire. Some embarrassing emails came out this



summer from the former Premier's office about your handling of this.

First, I have a quick question, and then I just want to walk through some other issues. Has there been a day in the last two years where you just wished your government had handled this differently?

**Hon. John Milloy:** Well, I suspect that I could ask you the same question, whether you wished that the PC Party or the NDP hadn't made the same promise to cancel it.

**Ms. Lisa MacLeod:** Okay. We can be cute or we can actually try to get to the bottom of why we're actually here, John. I read your statement as you delivered it. I reread it when Mr. Fedeli put it forward. A big part of the solution to this is you guys actually acknowledging that you have sort of taken the approach of "ready, fire, aim" and not really hit the mark, and then cost taxpayers lots of money. I asked you a simple question. Instead of blaming whoever our candidates were in the last election, I'm just asking you, do you think that your government could have done this a little differently?

1520

**Hon. John Milloy:** That is the whole point of the committee.

**Ms. Lisa MacLeod:** No, I'm asking you.

**Hon. John Milloy:** The point of the committee is that we sited 19 gas plants, and two of them were a mistake, which has actually been acknowledged. Every party in the House admitted it was a mistake.

**Ms. Lisa MacLeod:** At a cost of a billion dollars.

**Hon. John Milloy:** So we've asked this committee—part of their mandate is to provide advice to our government and to future governments on how to better site them—

**Ms. Lisa MacLeod:** I was just simply asking you if, during the time that my colleague—

**The Chair (Mr. Shafiq Qaadri):** Colleagues, if we might go one at a time.

**Ms. Lisa MacLeod:** I'm just pointing out, for example, that my colleague Mr. Fedeli just pointed out that he signed submissions in 2011, last year, in September 2012, ongoing through to even this past summer in 2013. For two full years, this minister promised that we would have all of the documents, and then we would find out that there would be another document dump. In fact, I've been here a few times when those document dumps had occurred, as have Mr. Fedeli and Mr. Yakabuski.

I'm just simply asking this minister, after he betrayed the trust of so many in this assembly and refused to disclose the documents for so long and then told us in the House that he had done it—I simply don't think that's satisfactory. I'm simply asking him, would he have done it differently?

**The Chair (Mr. Shafiq Qaadri):** Ms. MacLeod, we welcome your questions. I would just respectfully ask all members of the committee to please adopt parliamentary language.

**Ms. Lisa MacLeod:** Sure.

**Hon. John Milloy:** What happened that summer was not rocket science. The parliamentary—

**Ms. Lisa MacLeod:** Which summer was that?

**Hon. John Milloy:** The summer of 2012. Parliamentary committees have been dealing with sensitive material for years. You can go back to the parliamentary precedents of the 1800s. The idea of a minister coming to a committee and saying, "Look, we have some documents that are very, very sensitive, that are commercially sensitive and that involve solicitor-client privilege, and it would not be in the best interest of the public just to sort of slap them on the table and make them public for everyone to see in the midst of commercial negotiations" etc. There are numerous examples where the three parties or the opposition and the government got together, and they were able to make arrangements to have those documents looked at.

What I regret is that when the Speaker charged—the Speaker's ruling, if you read it, was a very thorough and thoughtful ruling, and he said, "I think the three parties can figure this out." What disappointed me the most is that I went to the three parties and I suggested a few ways forward—I said, "If you have alternate ways you want to bring forward, by all means let's figure this out."—the opposition parties waited out the clock.

**Ms. Lisa MacLeod:** I don't think that's necessarily fair. I think it's easy and convenient for you to try and blame Mr. Wilson and Mr. Bisson, and I think it's convenient for you to try to put this on us in the opposition, but I think in these failed negotiations—and you mentioned it in your deputation—you actually have to look in the mirror as well.

Again, I go back to this betrayal that we feel in the opposition when we're told consistently, time and time again, that the documents would be coming and then they weren't. We received some, then there were more. This happened over a two-year period. I would expect that anybody with a sense of self would understand that what they were doing was wrong.

I'm simply asking you, yet again, don't you think you could have done things differently? Even in your opening statement you talk about cheap political points. All we're simply trying to do is get the answers.

**Hon. John Milloy:** I think that we could learn a lot from this committee in terms of the future siting of gas plants. Obviously, it was a mistake, as we decided not to proceed with either Oakville or Mississauga. It was a mistake that was acknowledged by every party in the House. Part of the charge to this committee is to figure out a process to move forward. In terms of the gas plants, of course we wish that we had a better process so that we hadn't gotten into the Mississauga or the Oakville situation.

In terms of the production of documents, we are talking about a government—with emails alone, my officials tell me that we have over a million emails that are exchanged every day here in government. I think the Premier said in her testimony it's not like there's a file cabinet somewhere marked "gas plants," and it's a matter



of photocopying them and sending them in. This is very complex work; it's complicated work. People have worked in good faith.

In terms of the issue of that September, the production of further documents following that initial tranche that was given—that's something that has been dealt with by the House. In fact, Mr. Chair, the Speaker has ruled on that already.

**Ms. Lisa MacLeod:** Here's the issue: You brought up the siting of gas plants and that this is what this committee is supposed to do, and then you talked about the production of documents, which I think are both important. I do have a problem with how your government has chosen to site gas plants and then renege on them at a cost that you have never actually calculated. Again, I go back to the "ready, fire, aim" situation. You've never done that cost analysis.

Do you have the documents—this package?

**Hon. John Milloy:** Yes.

**Ms. Lisa MacLeod:** Can you just go to tab 11? This document was provided to your office in July 2012 outlining the potentially embarrassing documents that would be emerging and that had been identified by the Ministry of Energy. When we talked about—

**Hon. John Milloy:** I'm sorry, I'm not sure what page I'm supposed to be on.

**Ms. Lisa MacLeod:** It's the last page.

**Hon. John Milloy:** Oh, sorry, I wasn't looking at the right package.

**Ms. Lisa MacLeod:** Okay. When we talk about the production of documents, when we talk about the siting of the gas plants and we talk about money—first, I have a question: Why weren't those documents that are noted here in the July 7, 2012, memo under the name of Vapour Lock provided to us? It indicates that there would be an impact to ratepayers, yet at the time, you were still suggesting to everyone that it was only \$190 million to the taxpayers—and we still don't know how that breaks down to the consumer. You knew that the cost of Mississauga was higher, yet you chose not to disclose it.

The question that I have, after reading all of these documents and going through all of the Hansards that I've gone through in the past two years, is: Why do you feel, after withholding this information from us, that you should not be held in contempt of Parliament?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Hon. John Milloy:** I don't know where to start with one minute. No documentation was withheld from you. That summer, there were ongoing discussions at the committee, trying to balance commercial interests with the right of the committee to those documents—

**Mr. Victor Fedeli:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Point of order: Mr. Fedeli.

**Mr. Victor Fedeli:** The witness has said no documents were withheld, but it's very, very clear, Chair, that on September 24—

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli, I sense that's a point of disagreement, which you're welcome to continue to disagree on—

**Mr. Victor Fedeli:** No, no, it's a point of order that we've discussed in here. Well, it's a point of fact: We received documents two weeks later—

**The Chair (Mr. Shafiq Qaadri):** Points of fact are very welcome, but it's not a point to interrupt the committee testimony with.

Your time now resumes, Ms. MacLeod.

**Ms. Lisa MacLeod:** Well, this says:

"Confidential

"Overview of contentious responsive records in possession of energy

"Vapour-Lock

"July 7, 2012."

At the very end, it says:

"Note: Should be out of scope—not 'correspondence.'"

You withheld the information. Why should you not be held in contempt of Parliament, is my question.

**Hon. John Milloy:** First of all, I'm not familiar with this document, but in terms of anything that talks about scope, if we're talking about scope, we are talking about how—if the committee asks for certain documents, you provide certain documents. There obviously is a process by which you go through documents—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. MacLeod.

The floor passes now to Monsieur Bisson.

**Mr. Gilles Bisson:** Welcome, my dear House leader colleague. It's nice to have you before this committee.

**Hon. John Milloy:** It's great to be here.

**Mr. Gilles Bisson:** I'm used to meeting under more informal circumstances, but nonetheless, I have a series of questions I want to ask you.

You're aware of what the standing orders are and what standing order 110(a) and (b) are all about. Let me remind you: Standing order 110 deals with, "(a) Standing and select committees shall be severally empowered to examine, enquire into and report from time to time on all such matters as may be referred to them by the House."

And more to the point: "(b) Except when the House otherwise orders, each committee shall have the power to send for persons, papers and things."

Were you aware that that is in the standing orders?

**Hon. John Milloy:** Very much so.

**Mr. Gilles Bisson:** When you said earlier that this was all a cheap political trick on the part of the opposition, when you met with us—and I was there; I remember—for a short five minutes when you were trying to drib and drab the documents and control them in whatever way that you could, that in fact the government had an obligation to provide those documents to the committee, and if the committee so desired to have them, you had to provide them. Agreed?

1530

**Hon. John Milloy:** You're quoting from one procedure—

**Mr. Gilles Bisson:** The standing orders.

**Hon. John Milloy:** From the standing orders. Let me quote from O'Brien and Bosc—



**Mr. Gilles Bisson:** Okay. Well, hang on. Before you go to O'Brien and Bosc, you know that standing orders supersede O'Brien and Bosc or Erskine May or Beauchesne. The first authority is the standing orders, and where the standing orders are silent, then it goes to the precedents. In this particular case, it says "Except when the House otherwise orders," you have to provide the documents. So were you aware that the government had to provide those documents?

**Hon. John Milloy:** I was aware, but I was also aware of the commentary of O'Brien and Bosc, if I can share it.

**Mr. Gilles Bisson:** Yes, please.

**Hon. John Milloy:** "The power to call for persons, papers and records is absolute, but it is seldom exercised without consideration of the public interest. The House of Commons recognizes that it should not require the production of documents in all cases; considerations of public policy ... enter into the decision as to when it is appropriate to order the production of such documents."

The reason for my frustration with the four meetings between myself and the House leaders—and I remember very well the first meeting because it happened only a few hours after the Speaker's direction for us to figure it out—is, I said, "Look, there's a lot of different ways we could go here. We could have a lawyer. We could have judges. We could have in camera. We could have sealed documents. But the fact of the matter is, folks, we've got to figure this out. Please come to me with your suggestions." When I went forward with two potential paths, I said over and over again, "We are open to all discussions." If you say, "Look, we like this part of it but not this part. We want to do it this way," we will have that.

**Mr. Gilles Bisson:** My honourable colleague, my honourable colleague, you're aware of what the Speaker's ruling was, and the Speaker's ruling was that the government had to provide those documents and couldn't hide behind sub judice. He was pretty clear in his decision. What he had said was, "If you guys want to work something else out, that's up to you," but it was the right of the committee, which was maintained by the opposition, that in fact those documents had to be produced. Would you accept this following premise: that in fact, your government and your House leader's office were trying to slow down the process of releasing those documents?

**Hon. John Milloy:** I disagree with your interpretation of the Speaker's ruling. Let me quote just from a piece of it. This is Speaker Levac's ruling, and he quoted two passages from Speaker Milliken as reflecting his views. He said, "It seems to me that the issue before us is this: Is it possible to put into place a mechanism by which these documents could be made available to the House without compromising the security and confidentiality of the information they contain? In other words, is it possible for the two sides, working together in the best interests of the Canadians they serve, to devise a means where both their concerns are met? Surely that is not too much to hope for."

And he went on to say, "I, too, have immense faith in the abilities of the honourable members of this House. I

know that a solution can be found to this impasse. All sides need to exercise sobriety in this. Political fortunes should not be the motive for eroding"—

**Mr. Gilles Bisson:** Okay, so we all know how much time you can take reading that.

The point is, you had an obligation as a government to comply with the request by the committee. It's pretty clear in the actions of your government that, in fact, you guys were doing everything you could not to. Why do I know that? Because as House leader, I observed the strategy of your people—Dave Phillips and others—who were trying to do everything they could, including filibustering the estimates committee, to never allow the matter to be dealt with. So was it not the intent of the government not to release those documents?

**Hon. John Milloy:** Well, what you have termed "filibuster" was members of the committee going forward and raising the point over and over again that these were sensitive documents; these were documents that could interfere with—

**Mr. Gilles Bisson:** Listen, even in the case of Afghanistan, Speaker Milliken was pretty clear: You've got to give the documents. And our Speaker was pretty clear: You can't hide behind sub judice. So was it not the case that your government was actually trying to limit, in some way, the release of those documents, either in timing or in scope?

**Hon. John Milloy:** We were trying to help the committee and help the minister—when you ask about my office—come to terms with the fact that there were two competing interests here, in terms of public interest and in terms of the right of the committee to those documents. At the end of the day—as I say, this is not rocket science here. This is done over and over. There are all sorts of precedents.

**Mr. Gilles Bisson:** Right. Let me refer to a document dated July 4, from your office. It was drafted—

**Hon. John Milloy:** Is it in the—

**Mr. Gilles Bisson:** It's in our package, number 7—NDP package, number 7. And I read here from Dave Phillips an email that went out on July 4—

**Hon. John Milloy:** I don't know if I have that. Sorry.

**Mr. Gilles Bisson:** Here, I'll give you a copy.

**Hon. John Milloy:** If I have the NDP—

**Mr. Gilles Bisson:** Page 7.

**Hon. John Milloy:** Oh, okay. It doesn't have a—

**Mr. Gilles Bisson:** As you guys are looking for the document—David Phillips, who was at the government House leader's office and, I believe, was your chief of staff and also related to the Premier's office, has a memo that says, "I've attached a memo that Spaf and I drafted up re options for release of vapour...."

Turn to the next page, and go down to page 2 of that document, at the bottom:

"Strategic Goals

"To the extent possible, reduce the risk—fiscal and otherwise—posed by the production of documents to the successful resolution of litigation...."

But then, in point 2:



“Successfully manage the timing and manner of release of the documents so as to limit the negative communications/issues management impact on the government.”

Doesn't that sound as if you were trying to protect your political hide?

**Hon. John Milloy:** I look at the first point—

**Mr. Gilles Bisson:** Why did you write the second point?

**Hon. John Milloy:** First of all, I didn't write this document. The first point was, “To the extent possible, reduce the risk—fiscal and otherwise—posed by the production of documents....” We were trying to manage.

**Mr. Gilles Bisson:** I read that document for you. But why, on this point 2, do you say, “Successfully manage the timing and manner of release”—and then, in the third bullet point, “Facilitate the Minister of Energy's completion of his final five hours before the committee and avoid having the matter come before the House for a debate/vote”?

It sounds to me like you were trying to not comply with the request by the committee. Can't you come to that conclusion?

**Hon. John Milloy:** We were trying to reach a solution with the committee, which was ignoring their responsibility to balance both their right to documents with their responsibility to look at risks, fiscal and otherwise.

**Mr. Gilles Bisson:** We literally have thousands of documents that the government said were extremely sensitive, and when you look at them, you could post them on the front page of the Star, and it wouldn't make a difference.

**Hon. John Milloy:** The reason why, Mr. Bisson, is because the negotiations are over.

**Mr. Gilles Bisson:** A whole bunch of documents that you were saying were a risk in regard to confidential information in fact were documents such as, “Let's try to find a way to bully the Speaker so that we can change his mind.” Those are the kind of documents that you were trying to hold back.

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson.

**Mr. Gilles Bisson:** I stand corrected, Chair. I withdraw that. Thank you very much. But I do have it on the record.

Is it not the case that the House leader's office and you, as House leader, were in fact trying to manage the release of those documents?

**Hon. John Milloy:** Let me put something on the record. The Auditor General said, on September 5, in public accounts: “My sense on the Oakville one”—meaning the Oakville power plant—“is that it could very well be that some of this information could be subject to client-solicitor privilege, or even if we were to get it”—the documents—“in my opinion, it could be damaging to the province's negotiating position.”

**Mr. Gilles Bisson:** Was it or was it not your office that had the issues management on this file?

**Hon. John Milloy:** The Minister of Energy and the Minister of Energy's office would have had the primary lead on this file.

**Mr. Gilles Bisson:** So your office was not responsible for the management of how those documents would be released, as per the estimates committee request.

**Hon. John Milloy:** It would be ultimately up to the Minister of Energy and the Minister of Energy's office.

**Mr. Gilles Bisson:** What was your role in managing the response among the cabinet members?

**Hon. John Milloy:** During what time period?

**Mr. Gilles Bisson:** It was your time period; you were the House leader.

**Hon. John Milloy:** No, I said, during what time period?

**Mr. Gilles Bisson:** My question is, at the time that the request by the committee had been made and you were trying to hold that thing up at estimates committee, what was your role in regard to informing cabinet about what was going on, and who were the decision-makers?

**Hon. John Milloy:** Over the course of the summer, I didn't have a role.

**Mr. Gilles Bisson:** No, this is back in May. When the estimates committee put forward the request for the release of those documents and the documents had not been released and there had been no decision by the Speaker yet because the matter was not completed within the estimates committee, was it your office or the Ministry of Energy that was managing what was going on in that committee?

**Hon. John Milloy:** It was ultimately the Ministry of Energy, and they were getting any assistance they required from our office.

**Mr. Gilles Bisson:** What was the role of the government House leader's office in managing that issue?

**Hon. John Milloy:** At that point, very candidly, I don't think there was much of an issue to manage because it had just started in estimates. There was a discussion going on—sorry, maybe I'm misunderstanding your question.

**Mr. Gilles Bisson:** You were filibustering the committee. Who gave that order?

**Hon. John Milloy:** You asked an earlier question about ministers speaking publicly and all that.

**Mr. Gilles Bisson:** No, what I asked you was, at the time that the committee had requested the estimates documents and they had not been produced and there was no Speaker's ruling and they were still at the estimates portion, who, within the government, was responsible for the strategy about what that committee did?

1540

**Hon. John Milloy:** It was ultimately the members of that committee. We had the Minister of Energy, and our office played a facilitating role. We were trying to help the Minister of Energy—

**Mr. Gilles Bisson:** Who made the final decisions? Who made the final decisions about strategy in that committee?

**Hon. John Milloy:** Ultimately the members of that committee would have made decisions about points that they would have raised, and the Minister of Energy



would have made points about what was going forward. We would have provided advice to them.

If your question is: Were we trying to help the Minister of Energy and work with all involved—

**Mr. Gilles Bisson:** Let me make it really clear again: Who was responsible for directing the strategy at the estimates committee at the time that the documents had been asked to be released? Was it the Minister of Energy's office, was it yours or was it the Premier's? Who controlled the strategy?

**Hon. John Milloy:** You're characterization—I don't know—smacks a little bit of Hollywood. I mean, we had a situation—

**Mr. Gilles Bisson:** It's not Hollywood.

**Hon. John Milloy:** No, but it does; it does.

**Mr. Gilles Bisson:** No, John, don't be glib, here. Somebody manages what happens on committees. The committee just doesn't do what it wants; it takes a direction either from the ministry or from the government House leader's office. My question is, who was directing the strategy at the estimates committee at the time of the original request for the documents?

**Hon. John Milloy:** We had a problem, and that problem was that we had a committee that had asked the Minister of Energy for documents which were highly sensitive and which were subject to solicitor-client privilege.

**Mr. Gilles Bisson:** We know all that. But who directed the strategy? Was it the Minister of Energy or was it you?

**Hon. John Milloy:** We worked with the Minister of Energy and with committee members to try to, in a sense, bring the committee to recognize its responsibility to balance its right to ask for them.

**Mr. Gilles Bisson:** That's fine, but that's defined as "strategy." So my question is, who was responsible, in the end, for determining what the strategy was going to be?

**Hon. John Milloy:** As I say, it was a decision—I mean, it was ultimately the Minister of Energy that identified the problem, and it was our office that tried to offer his office advice on how we could manage it at committee.

**Mr. Gilles Bisson:** Who in the government, who within your caucus was responsible for directing the strategy at that committee? Were all your committee members rogue? Was it your political staff that went rogue? Was it your decision? Was it the Minister of Energy's decision? Was it cabinet? Who made the decision?

**Hon. John Milloy:** As I said, you don't seem—it's the premise of your question I'm having trouble with, because ultimately, it was the Minister of Energy who identified the problem. It was our office that helped make the case to the committee and worked with our members of the committee. So ultimately, if you're looking for a decision-making tree, it was joint. It was us working together.

**Mr. Gilles Bisson:** So it was the Minister of Energy's office and it was the House leader's office? Was it also

the Premier's office that ultimately made those decisions?

**Hon. John Milloy:** Again, "ultimately made the decision"—the fact of the matter was that there was a problem and we were trying to deal with it, and we were trying to find the best way forward. I reject your, as I say, House-of-Cards view that somehow, there was someone sitting in a dark office saying, "Do this" or "Do that." We were working together to try to make the committee aware of its responsibilities.

**Mr. Gilles Bisson:** So things just happen naturally. There are no decision-makers within government; it just happens. Come on, John. We've all been around. Somebody had to go and give direction to your members on committee about what to do. It was clear, according to your own email here, that you didn't want to release those documents. Somebody had to manage how that committee functioned, and I know you were involved because I was in your office a couple of times when some of those management issues were going on.

So I ask again: Who ultimately was responsible? Was it the House leader? Was it the Minister of Energy? Was it the Premier? Was it all of you?

**Hon. John Milloy:** I'm going to give the same answer. We worked with the Minister of Energy's office to help him deal with a very serious problem he was facing in committee; the committee was asking for documents which were sensitive in nature.

**Mr. Gilles Bisson:** Was the Premier's office involved?

**Hon. John Milloy:** The Premier's office was obviously kept informed at a staff level of what went on.

**Mr. Gilles Bisson:** Okay. Kept informed is different than being involved. Were they just kept informed or did the Premier's office give back direction about, "No, you can't do this. Yes, you can do that"?

**Hon. John Milloy:** But ultimately—again, I reject your Hollywood view that it was one person sitting in a room. It was the fact that the—

**Mr. Gilles Bisson:** Listen, the bad Hollywood movie is what you guys did. I'm asking a question.

**Hon. John Milloy:** It was the fact that the Minister of Energy faced a problem in front of the committee, and we helped the Minister of Energy manage that problem.

**Mr. Gilles Bisson:** We know that the Minister of Energy was trying to manage a problem, and what you've confirmed is that both the Minister of Energy's office and your office, as government House leader, were managing how that committee did its work. I asked you the question and I ask again: Was it strictly reporting to the Premier's office what was going on, or did the Premier's office give back direction on what to do there?

**Hon. John Milloy:** Again, I think people worked co-operatively to help the Minister of Energy deal with the problem that he was facing.

**Mr. Gilles Bisson:** So the Premier's office was also involved in the decision-making; that's essentially what you're saying. So it was the Premier's office, your office and the Minister of Energy's office.



**Hon. John Milloy:** I'm saying that the relevant political offices that were involved would be involved in trying to help the minister deal with this issue that he was facing in front of the committee.

**Mr. Gilles Bisson:** Okay. Do you have something?

**Mr. Peter Tabuns:** What my colleague and I find strange is the idea that you, as House leader, would not have been consulted on the strategy. Were you not consulted on the strategy? Did your staff not come to you and say, "House leader, this is the approach we're taking on committee. We're going to filibuster this one. Do you think that this is a good direction or not?"

**Hon. John Milloy:** You see, I characterize it a little bit differently than filibustering. I see it as a situation where we had a committee where, quite frankly, the opposition was not taking seriously their responsibility to balance the public interest versus their absolute right. When you look at the procedural authorities, they will say there is an obligation on the part of the committee. What we were trying to do was to make that case, and we made that case through amendments, we made that case through discussions at the committee—

**Mr. Peter Tabuns:** Mr. Minister, document 8, from Ryan Dunn to David Phillips from your office and John Brodhead from the Premier's office, refers to this as a filibuster:

"In exchange, we agree to:

"(a) End the filibuster on the motion and resume questions ... if they don't agree we will filibuster estimates for the entire summer."

You guys were filibustering; that's what you were doing. That was your strategic and tactical approach.

**Hon. John Milloy:** Well, the strategic and tactical approach was, as I said, to try to get the committee to recognize its responsibility and to come up with a solution, and that was ultimately what I pitched—if I can use that term—to the Speaker. What's very interesting about the Speaker's ruling is that the Speaker's ruling was not absolute. He said, and he cited me as saying, "Yes, I recognize what the government House leader said. You three House leaders go and try to figure this out."

**Mr. Peter Tabuns:** Was this matter discussed at cabinet?

**Mr. Gilles Bisson:** And we're talking specifically when the estimates committee was requesting the documents.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Hon. John Milloy:** No.

**Mr. Gilles Bisson:** It was never discussed at cabinet?

**Hon. John Milloy:** Well, you said—ask your question again.

**Mr. Gilles Bisson:** The question is, at the time that the estimates committee was requesting the documents and prior to the decision by the Speaker of a *prima facie* case of contempt, did this get discussed at cabinet—the strategies around the estimates committee?

**Hon. John Milloy:** The strategies around the estimates committee during that period; we're not talking about after the Speaker's ruling.

**Mr. Gilles Bisson:** No, we're talking about during that period.

**Hon. John Milloy:** No, not that I can recall. No.

**Mr. Gilles Bisson:** Let me go further, then. Was there any discussion amongst cabinet in regard to this issue at all? Did you guys ever discuss it at cabinet? "Hey, by the way, there's something going on at estimates. They're asking for documents." "Oh, my God, we can't do that. They're commercially sensitive." Did you ever have those kinds of discussions?

**Hon. John Milloy:** As we headed, obviously—we had the Speaker's ruling and—

**Mr. Gilles Bisson:** No, there was no Speaker's ruling at this point. I'm talking prior to the Speaker's ruling.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bisson. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you very much, Chair. Good afternoon, Minister Milloy. I've just got to ask you this: Are all House leaders' meetings like this?

**Hon. John Milloy:** No, they're not as much fun.

**Mr. Bob Delaney:** I see.

I've listened very carefully for 40 minutes, and this is all about, "Were you briefed on something you didn't need a briefing on because you didn't sign a document?"

I want to start out by asking you about then-Minister Bentley's appearance at the estimates committee. I'm going to give you a bit of a preamble here. On May 16, Mr. Leone moved a motion for correspondence from the Minister of Energy, the Ministry of Energy and the Ontario Power Authority regarding the two gas-fired peak power generating plants, one in Oakville and one in Mississauga. At the time, sensitive commercial negotiations were ongoing with both companies, and in response, then-Minister Bentley wrote to the committee outlining that the motion was requesting documents subject to solicitor-client privilege and litigation privilege. The minister warned that these documents were highly commercially sensitive and cautioned the committee that their release at that time would impact ongoing negotiations.

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So here's the question: Can you speak to some of the issues raised by Mr. Bentley at the estimates committee?

**Hon. John Milloy:** That committee was one of many that was going on, and I guess I'm picking up a little on the NDP. I became much more engaged later in the summer when the Speaker put forward his ruling. As I said, I think it's very important that you read the ruling, because the ruling was not some slam dunk that said, "Oh, the opposition was right and the government is wrong." It actually said, "Look, we understand. There are two competing interests here. Ultimately committees have absolute right to this material, but there are many instances where committees have been able to sort this out."

He tasked the three House leaders, and I quoted a little bit earlier that he quoted Milliken. He put a lot on our shoulders. He said, "You're responsible individuals. I think you can put aside some partisan differences and figure it out."



That was on a Thursday, I believe, and we had a regular House leaders' meeting that followed a few hours later. I remember saying, "Look, I haven't had a great opportunity"—at that point—"to put together formal proposals. But the bottom line here is that there are all sorts of precedents where you could seal records, where you could hold in camera meetings, where you could put the records"—I understand this was maybe in pre-electronic days—"in a sealed room, you have a security guard there and members of the committee are allowed to go see them, and they sign a confidentiality agreement."

I said to them, "Look, there are all sorts of ways forward. We could get a retired judge to come in. We could ask the Auditor General to come and any documents that Mr. Bentley was concerned with, the Auditor General could go through and say, 'Look, you're right. We can't release these,' and we could find a way to move forward."

So I said to them, "Look, there are a million and one ways to do it." I'll be very candid. I actually said, "You guys hold all the cards here. Ultimately, we've been charged. We've got a week. You guys have raised the concern. Please, come forward with your suggestions and ideas. I will try to develop something."

And we did develop what we called the two paths. First of all, I said, "Look, you have doubts about the commercial sensitivity about this. We can provide you with a very, very detailed briefing. We can sign an oath of confidentiality. We'll walk through exactly where we are with the Oakville negotiations, and explain to you why there are some sensitivities around it." Then, "We think we're going to solve Oakville. We're going to solve it very soon. Why don't we seal the documents for a period of time? You can have an insurance policy." Initially, I said six weeks. I said, "At the end of six weeks they'll be unsealed because we think we can get it done in six weeks." In fact, I believe I said a few times that if six weeks is too long, then come up with another date, and move it forward.

Or another way to do it would be to hold in camera hearings, where the material is provided confidentially; again, perhaps the use of a panel. We talked about how there are former judges and lawyers, and all that.

But what frustrated me is that there was no engagement. The opposition sat there, and basically waited out the clock. The opposition didn't say to me, "You know what? Okay, option 1, we kind of like this but we don't like that," and, "Oh, this is unreasonable. Why don't we do it this way?" They just waited out the clock, and I do not feel that, in any way, respects the tone or the spirit of the Speaker's ruling, which is, "You're responsible parliamentarians. Put aside some partisan differences and find a way for a committee to deal with it."

I bumped into a former Tory MPP who had been around in the Davis years and beyond. I remember, during all of this, I think I bumped into him on the street. He said to me, "This is crazy. Committees deal with confidential information all the time. You could come up with a system very quickly. There are all sorts of preced-

ents. Use a lawyer. Use a judge. Put something in camera." You can go to Ottawa—and not just on Afghan detainees—you can go to Queen's Park, you can go to Legislatures across this country and find all sorts of instances where committees were able to deal with documents.

But what I think upset me the most was that—first of all, they would not engage. But what upset me the most is that it stopped being about the documents, which they had a right to—I fully admit they have a right to. It had to do with going after Chris Bentley. I believe it was the first meeting, and there was a Conservative staffer, Jeffrey Kroeker, who has since left Queen's Park, who went on a tirade like I had never heard, a staff member speaking to elected members, talking about how Chris Bentley could potentially be disbarred. We had Jim Wilson, I believe in a press release, talking about him going to jail. This is outrageous.

This is a former Attorney General who was trying to protect the best interests of taxpayers, and instead of the opposition engaging and saying, "How can we figure a way forward?" as had been directed by the Speaker, I had to listen to some staffer talking to me about a former Attorney General being disbarred.

**Mr. Bob Delaney:** Okay. Thank you for that.

Let's just shift, then, to the actual decision to cancel the two plants. Again, just a quick recap: The commitment to cancel the Mississauga gas plant was made by all three parties during the 2011 election and, shortly after being re-elected, our government announced—

**Mr. John Yakabuski:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, a point of order.

**Mr. John Yakabuski:** On a point of order: I give Mr. Delaney the opportunity to correct his record. No decision was made by all three parties. A decision was made by the political arm of the Liberal Party during the 2011 election—

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, however interesting and valuable, it's not a point of order. Thank you.

Continue.

**Mr. Bob Delaney:** So let's recap: The commitment to cancel the Mississauga gas plant was made by all three parties during the 2011 election and, shortly after being re-elected, our government announced its intention to relocate the facility. The decision caused the commencement of civil proceedings in both the province of Ontario and the state of New York. These lawsuits, as well as confidential settlement negotiations, were ongoing at the time that Mr. Leone moved his motion at the estimates committee here in Queen's Park in May 2012.

Speaking about Oakville, all three parties supported the cancellation of that plant. While no formal litigation resulted from the government's decision, the province and TransCanada Energy, the proponent in Oakville, had been engaged in formal arbitration and confidential settlement discussions.

In this committee, numerous independent witnesses have testified that had these documents been made public



before the deals were finalized, it would have greatly jeopardized the government's negotiating position. In fact, the Auditor General likened it to not wanting to tip your hand in a game of cards.

Could you comment on how these concerns mirrored some of the concerns you yourself had when you were working with the opposition to try to negotiate a solution with regard to the release of the documents?

**Hon. John Milloy:** That was the bottom line. Nobody argued with the absolute right of the committee to produce the documents. In my written presentation to the Speaker, which was shared with all parties as a public document, I pointed out—and I quoted from O'Brien and Bosc earlier in response to Mr. Bisson—that there is parliamentary tradition going back to the 1800s which says that all parties—in this case, we're talking about the opposition—have a responsibility to balance the public good with their right to ask for documents.

The advice that I was receiving from the Minister of Energy, which obviously he had made very clear to the committee, was that these were very, very sensitive documents, and to simply give them to the committee, to make them public, could have jeopardized some very high-stakes negotiations that were going on.

What was interesting is that I was being advised that we were close to a deal on Oakville, so when I met with the House leaders, I made that very clear. As I said, I offered them a briefing where we spoke about, "Look, give us a little bit more time. We think we can get a deal." I realize there are limits to the patience of the opposition. I never said, "Make this open-ended. We'll seal it until Oakville gets done. If that takes 10 years, who cares?" I said, "Give us six weeks." I actually, if I recall correctly, had said, "Look, if you want to make it less than six weeks, outline your concern."

The whole issue was simply to protect the taxpayers' dollars. What shocked me was just the absolute lack of engagement on the part of the opposition. I mean, if you look up "passive aggressive," there they were. They sat and waited out the clock because the Speaker had said, "Unless you reach an agreement by X date"—I guess it was the 24th of September—"then we'll go back to my ruling."

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So there was no attempt. They did not come forward with their own plan. They didn't raise it. When I became House leader, I always joked in the media that I thought we'd be ordering a lot of Chinese food for late-night meetings and we'd be there until 2 or 3 in the morning. Party X would say, "Well, we could do it this way, and we want a lawyer," and the other party would say, "No, we want a judge," and I'd say, "Okay, well, maybe we'll get a lawyer and a judge, and could we get the Auditor General?"

I thought there would be those discussions, but instead they just sat there. As I outlined it, they showed absolutely no recognition of their responsibility. They have a responsibility here as much as a right, and it was that lack of balance, and unfairness, which was causing so much

frustration over the summer. It was causing frustration for Minister Bentley. It was causing frustration for committee members. Read the Hansard of the estimates committee that summer. You had deputations that were made by a number of our members, very passionate ones, that this was very, very dangerous. You had support from the Auditor General and from others around this issue of releasing the documents, and that it could jeopardize them.

**Mr. Bob Delaney:** Okay. Thank you. Dave Phillips, at that time your chief of staff, wrote a memo on July 4, 2012. In that memo, which we've seen in the committee, he emphasized that there was a fiscal risk posed by the production of the documents until there was a successful resolution of litigation and some of the other legal processes related to both of the gas plants. In every option that he laid out, it depended on the outcomes of these negotiations.

It's clear that the documents were going to be provided to the committee. In fact, the opposition has alleged that there was an attempt to keep the documents hidden forever, but the testimony and the emails that we've seen at the committee showed that this was simply not true. In fact, as soon as the Mississauga relocation deal was finalized and all legal matters had been settled on July 10 of that year, 2012, the minister directed his ministry to provide the committee with all correspondence related to the Mississauga facility responsive to the motion, except those records subject to solicitor-client privilege.

Would you comment on how this reinforced what then-Minister Bentley has said, that it was not a matter of if, but when the documents would be released?

**Hon. John Milloy:** That's the crux of the matter. This was about timing. This was about the negotiations that were going on. This was about the potential fiscal hit that the taxpayers could have, and this was very much about trying to protect them and trying to find that balance. That was Minister Bentley's concern. He faced a committee that recognized its right—and I recognize its right—to ask for those documents, but certainly did not recognize its responsibilities to try to balance them. What my office did was try to help manage this challenge that Minister Bentley had.

After the Speaker's ruling, we were actually tasked with having to find a way forward. As I say, somehow around this place there's this view that this is the first time that a parliamentary committee has had to deal with this. There are dozens and dozens of examples where parliamentary committees deal with sensitive material. There were all sorts of opportunities to come up with what I think would have been a very reasonable solution. We threw out the idea of a judge, we threw out the idea of the Auditor General, in camera, documents sealed until the negotiations are over, but the reason why—I'm pleased, Mr. Delaney, that you raised all these quotes—was because of the taxpayers' dollars, because these were sensitive negotiations.

I'm putting it in a very simplistic form, but it's the same principle. If I'm selling my car and Mr. Del Duca is



looking at it, and I send you an email saying, “Well, I’m asking this amount, but I’ll take this amount,” I certainly don’t want Mr. Del Duca to see that email or to see that document. It’s simple, but that’s the principle. These are very, very complex negotiations. There were internal documents that could affect those negotiations and ultimately affect the taxpayer.

**Mr. Bob Delaney:** Let’s go back to some of the early part in the estimates committee. I want to talk to you a little bit about the Chair’s ruling during those proceedings. On a number of occasions, Mr. Prue, the member for Beaches–East York, the estimates committee Chair, made such comments as: “I think the minister, being a lawyer himself, knows full well that he may choose to answer the question in such a way as not to prejudice the province in any way, and I would expect him to do so.”

In terms of the document production motion, Mr. Prue, in his role as committee Chair, stated, regarding the committee: “They have the right to ask for the documentation. The minister has the right to decline either giving that documentation or giving voice to that documentation during his answering of the questions.”

To what degree were you interpreting the fact that the Chair was validating the concerns that then-Minister of Energy Chris Bentley had raised?

**Hon. John Milloy:** I think they’re very, very important quotes. I think it’s also important to look at the discussion and debate that took place over that period of time, to look at amendments that were moved, particularly by government members. I think there was a glimmer of a grappling with this responsibility. When I look at those quotes—which I cited myself when I made my speech in the Legislature on the motion that emanated from the Speaker’s ruling—I cited these, and I think other members did, of giving Mr. Bentley some comfort that there were these competing interests and at least the Chair of the committee recognized these competing interests and, I think, set the playing field for the debate and the discussion that went on that ultimately led to the report by the committee, and then, from that, Mr. Leone’s motion, and then the charge to the House leaders.

If you look at this, again, you can’t paint this simple picture that the opposition sometimes like to paint, that the committee said, “We want these documents.” The minister said, “No.” And the Speaker said, “Oh, you’ve found a *prima facie* contempt because you said no.”

No; what happened was the committee grappled with it through the Chair’s ruling—or the Chair grappled through it. Certainly government members of the committee grappled with it through their speeches, through their amendments that they tried to put forward and through their efforts to bring the committee to this understanding of their responsibility. The opposition just tuned out. I mean, the opposition only saw half of the glass, which said, “We have the right,” and they forgot about the responsibility. That’s the crux of the matter; that’s the frustration. I think the Speaker’s ruling was very, very clear that, as the quote I gave, you’ve got to

put your partisan differences aside and you’ve got to do what other committees have done and what other House leaders have done, and find something workable. The opposition never showed up.

**Mr. Bob Delaney:** Okay. Thanks, Chair. We’ll pick it up on the next round.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

Thanks for your patience, Mr. Yakabuski. The floor is now yours.

**Mr. John Yakabuski:** Thank you very much. Patience has nothing to do with it.

Thank you very much, Minister, for joining us today. I know you’re a very busy man with all your meetings and everything else, especially those House leaders’ meetings that you seem to enjoy so much.

Just getting back to some of the line of questioning between you and Mr. Delaney, I just want to put the end to that story—just real quick. He keeps going on about how the release of the documents could jeopardize the negotiations between the government, the OPA and TransCanada. The fact of the matter is that the Speaker made his ruling that the documents must be released. The opposition parties said no to your proposal, and a day later, the deal was done. The deal was done. So this bogus, ridiculous story about how you were in sensitive negotiations is just a load of bull—

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, that’s probably a new low for Parliament.

**Mr. John Yakabuski:** Oh, sorry—a load of horse feathers.

You guys were done. It was done. You were just trying to stand in the way of us getting the documents because the minute that your last attempt to withhold those documents from us failed, within a day, the deal was done. The deal was done with TransCanada. You’re moving it down to Napanee, building a 900-megawatt power plant there where it’s not needed, where we have a natural gas and oil power plant there now that gets used less than 5% of the time. But the deal was done. So that story, I think you should just forget about it. There’s no credibility to it whatsoever.

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**Hon. John Milloy:** Can I respond?

**Mr. John Yakabuski:** I haven’t asked you a question yet.

**Hon. John Milloy:** Oh, okay. It’s sometimes hard to tell, John.

**Mr. John Yakabuski:** On September 24, you stated in the House that all the documents had been released. Then, later—in fact, I think it was during the Thanksgiving constit week—all of a sudden, a little memo came out: “Oh, we found more documents.” You changed your tune at that point. You stopped saying, “We’ve released all the documents”—“We released documents.”

When did you know that there was another tranche of documents that had not been released when you said—and I don’t say “you” necessarily personally. Premier McGuinty said at the time, and others had said, “All the



documents have been turned over to the committee.” When did you know there were actually more?

**Hon. John Milloy:** Mr. Yakabuski, this has been the subject of a point of privilege in the Legislature. Actually, I stood up on a point of order, and then on a point of privilege. I made two very thorough statements to the Legislature on this whole issue, and the Speaker has ruled on it.

Chair, I’m very sensitive because I’ve gotten my wrist slapped a number of times in the House for referring to one Speaker’s ruling. This is another Speaker’s ruling. As I say, the presentations have been made. I look for guidance as to whether we can go into this.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Minister Milloy. We’re just conferring. The time is stopped.

Fair game. Continue.

**Mr. John Yakabuski:** He could answer that question.

You’re more than welcome to answer that question. You’re not obliged to, but you’re more than welcome to.

**Hon. John Milloy:** I’m going to be very candid and say that because it was a point of privilege—I don’t have my notes in front of me, but I would refer you to Hansard, where I outlined in my presentation the point of privilege.

As to when I found out—and I believe—

**Mr. John Yakabuski:** Thank you, Minister. You don’t have the date. We don’t need your sad story about why you can’t tell us here.

You did know long before you let us know, you did know long before you let other House leaders know, you did know long before you let members of the Legislature know, that there were other documents. What was the reason? What was the plan? What was the strategy? Why were you withholding that information from people in the House?

**Hon. John Milloy:** No, not at all. I refer you to my statement in the House. I received confirmation of the existence of more documents—I believe it was the day before the note that you’re talking about, or the statement that went out, of more documents. When the House reconvened after the Thanksgiving break on the Monday, I stood up on a point of order to correct the record and explain the fact that more documents had been found. When I stood in the House on the 25th of September and said that all documents had been put forward, that was my knowledge at that time.

As I said, I have outlined this in great detail. A point of privilege was raised by one of your colleagues, and the Speaker has ruled on it, and I consider the matter closed.

As I say, my wrists have been slapped enough—

**Mr. John Yakabuski:** The question is closed. Thank you very much.

**Hon. John Milloy:** —without referring to another Speaker’s ruling.

**Mr. John Yakabuski:** You’ve been going on about this committee and how you feel that it has been kind of an opposition-driven witch hunt. Well, this scandal has been well known for two years, and we still don’t know how much Oakville is going to cost us. We only know

Mississauga because of the auditor’s report. You people know what Oakville is costing, and you’re still withholding that information.

The other thing that I have a problem with this committee—you wonder why we get a little frustrated—

**Mr. Bob Delaney:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Point of order, Mr. Delaney.

**Mr. Bob Delaney:** Chair, standing order 23(h), I believe, does not allow a member to make an allegation against another. Mr. Yakabuski has made an unsubstantiated allegation against the witness.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. The point is well taken.

Mr. Yakabuski, please continue.

**Mr. John Yakabuski:** Thank you very much.

What we do know—and you wonder why we get frustrated at this committee. Liberal staffers have come before this committee—and we’re trying to find out who is conducting the orchestra, who is giving the orders. This is a cover-up of gigantic proportions. It’s orchestrated somewhere. We’re trying to find that out. Liberal staffers have come here and perjured themselves. We know that—

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, there’s no—

**Mr. John Yakabuski:** Just a minute, Chair. When one staffer says one thing and another staffer contradicts that staffer, the two of them can’t be telling the truth. At least one of them is lying before this committee. That is not deniable.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, those would be points of differentiation and difference of opinion. I would invite you to please continue and perhaps—

**Mr. John Yakabuski:** People sit before there, and witnesses other than MPPs take an oath. We have had Liberal staffers come before this committee and directly contradict the testimony of another Liberal staffer. You wonder why we’re getting frustrated? That’s why we’re getting frustrated, because we have been on a two-year search for the truth, and we can’t get it. Your testimony here today is not helping us one little bit.

**Mr. Gilles Bisson:** We’re getting a pretty good idea of what happened.

**Mr. John Yakabuski:** Well, we have a pretty good idea, but we need to hear it from the government officials who are ready to take responsibility for their actions.

**Hon. John Milloy:** I’m not sure what your question is. What’s your question, Mr. Yakabuski?

**Mr. John Yakabuski:** I didn’t have a question yet. It’s coming.

**Hon. John Milloy:** As I said, it’s hard to tell sometimes.

**Mr. John Yakabuski:** I’d like to know when you knew—even though you were saying in the House that \$40 million was the total cost of cancelling Oakville—that it was going to be more, because we have documentation that goes way previous to when there was an



admission in the House that there were other costs. When did you know?

**Hon. John Milloy:** Any information that I received on costing during that period would have come from the Minister of Energy or the Ministry of Energy, which in turn received it from the OPA. When questions came up, the Premier asked the Auditor General to look into the Oakville plant. I know from media reports that the new Auditor General has said that her report is forthcoming in the coming weeks. I have not seen a copy of that report and I have no idea what that report is going to say. So I do not know what the costs are of the cancellation or the re-siting of the Oakville plant according to the Auditor General.

I reject, and I actually am a bit appalled, that you at this committee and in the House continue to state that I somehow have that knowledge. I do not have that knowledge.

**Mr. John Yakabuski:** In your opening statement today, you as much said that the problem here was the opposition. You've accused us, about the release of those documents—let me quote it—of “scoring cheap political points.”

Let me ask you. You continue to raise the names of Progressive Conservative candidates in the 2011 election. You seem to know very little, or at least you disclosed very little to this committee, about what went on in the decision-making process about cancelling these plants and when those decisions were made. What possible involvement in the decision to cancel these plants and knowledge of it would Geoff Janoscik or Zoran Churchin have? Is it fair to say that they would know nothing?

**Hon. John Milloy:** Well, I would have suspected, with the amount of drama that I've seen coming from the opposition benches, particularly the Conservatives—

**Mr. John Yakabuski:** What would they know, I asked you, Minister?

**Hon. John Milloy:** —that when you—

**Mr. John Yakabuski:** Minister, what would they know? They were in an election and they took a stance saying they would stand to see this—

**Hon. John Milloy:** —when those members in that riding—

**The Chair (Mr. Shafiq Qaadri):** Colleagues, one at a time, please.

**Mr. John Yakabuski:** What would they know? What factual evidence would they know about the contracts or anything else? Would they know anything?

**Hon. John Milloy:** May I answer?

**Mr. John Yakabuski:** Yes, answer the question. Stop trying to score cheap political points, and answer the question.

**Hon. John Milloy:** Well, I would have suspected, based on the presentation that you have put forward, that they would have been very, very concerned when your leader made that promise, and they would have asked about costing. They would have consulted—

**Mr. John Yakabuski:** We've taken two years trying to find out about costing, and we're members and don't

know. How in the name of God would they get to know? How would they get the information if we can't get it at this committee?

**Hon. John Milloy:** —with Conservative policy advisers who were involved in advising your leader, and they could have made sure that they had voiced either their concerns or been made aware of the estimates that were coming forth from the Progressive Conservatives. I invite you to encourage them to come in so that we can ask those questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. Gentlemen, we are setting a bad example for the children, but I would like to acknowledge the presence of Dr. Shafiq Qaadri Jr. and Dr. Shamsa Qaadri. Welcome.

I pass the floor now to the NDP. Mr. Bisson.

**Mr. Gilles Bisson:** Chair, I am sure if we called your children before this committee, we would find out all kinds of things. Anyways, that's another point.

I want to bring your attention—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bisson.

**Mr. Gilles Bisson:** You're welcome.

**The Chair (Mr. Shafiq Qaadri):** That's not in the scope of this committee.

**Mr. Gilles Bisson:** I bring you back to our documents, document 7. In that is an email from David Phillips in your office as government House leader, where he and Kevin Spafford developed, essentially, a summary of options of how you were going to manage the estimates committee. Previously in our round of questioning, we established that, in fact, your office was involved in the management of what happened at the estimates committee prior to the ruling of a prima facie case of contempt. We established that it was also done with the co-operation of the Minister of Energy's office and the Premier.

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I want to bring you to page 3. It says, at the very top of it, “Continue moving and debating government amendments to the motion for the remaining four summer committee days.” That's one of your options. It says, “Details: Government members continue to debate amendments and move additional amendments for the remaining 32 hours of summer committee time.” Sounds like a filibuster to me, but it says, “Advantages: Would ensure both that no documents are released and that Minister Bentley does not face five hours of public testimony in immediate aftermath of Mississauga announcement.”

So it's pretty clear that your office was involved in developing the strategies about how the estimates committee was not to release the document. Is that not the case?

**Hon. John Milloy:** We were attempting to deal with a committee that was not taking its responsibility seriously to manage the two competing interests. The committee members who ultimately make the decision, including Liberal committee members—I invite you to read the



Hansard. Our folks were going forward and making the case over and over again, and it was like talking to a brick wall with the opposition.

**Mr. Gilles Bisson:** My honourable friend, it was clear from this particular document, this was a strategy document. This was a document that was a summary of options of how you were going to manage the estimates committee at the time, is it not? That's what it says at the top: "Summary of options."

**Hon. John Milloy:** We've already established the fact that Minister Bentley was reluctant to release the documents because of their sensitive nature.

**Mr. Gilles Bisson:** We've already established the fact that, by the standing orders of this assembly, the committee has the right to ask for those documents. You may not want to give them, you may have reasons not to give them, but the committee does have that obligation, does have that authority.

I would say it's fairly clear; under "Advantages" it said, "Would ensure both that no documents are released" and that the minister doesn't face the five hours. It further goes on to say, "If the government is successful in debating amendments, it would simply kick the matter to the fall when the House returns."

It's pretty clear you guys were trying to manage how you were going to not release these documents. Isn't that the case? You guys were actually trying not to release the documents?

**Hon. John Milloy:** I will quote Minister Bentley, as Mr. Delaney did. He said it was a question of when, not if, and there were issues around timing because of the sensitive ones.

**Mr. Gilles Bisson:** I understand what was said in the House. I don't argue that for a second. I've heard you say it and I heard Minister Bentley say it, but the fact is that the committee had a right to ask for those documents. The *prima facie* case of contempt was found because those documents weren't released, and you couldn't hide behind the sub judice rule.

It's pretty clear that your office was involved in this, and I guess I come back to the main question that I had earlier: Who, at the end, was ultimately responsible to make the final decisions about the strategies of dealing with the release of those documents? Was it the Premier, was it you or was it the Minister of Energy?

**Hon. John Milloy:** I just want to correct one thing: The *prima facie* case was found by the Speaker because the three House leaders could not come to an agreement between them—

**Mr. Gilles Bisson:** No.

**Hon. John Milloy:** —and the two House leaders would not—

**Mr. Gilles Bisson:** No, that's not the case. Minister—

**Hon. John Milloy:** He suspended it for one week—

**Mr. Gilles Bisson:** No, Minister. The *prima facie* case of contempt, for the record, was found way before he said, "You guys try to go work it out." I agree that he said, "Try to go work it out," but he found that there was a *prima facie* case of contempt and later said, "Why don't

you guys try to work it out?" The point is, he found a *prima facie* case of contempt, and it was related to the non-release of the documents.

I go back to my original question: Who ultimately had the responsibility for decision-making about what that committee did? Was it you as the government House leader? Was it the Minister of Energy? Was it the Premier? Was it a combination of all of you?

**Hon. John Milloy:** Just to go back to the point, if the three House leaders had gone to the Speaker and said, "We have found a way forward"—

**Mr. Gilles Bisson:** That's not the question. We all know the Speaker said, "Try to work it out."

**Hon. John Milloy:** —we would not have had the *prima facie* contempt.

In terms of the committee, we are talking about—the Minister of Energy was appearing in front of the committee, and our office was helping them manage it.

**Mr. Gilles Bisson:** Your office was trying to manage it. Okay.

**Hon. John Milloy:** As I say, I reject your premise. I reject this House of Cards—that there was someone in the backroom running the show. It was us working together.

**Mr. Gilles Bisson:** Somebody was running the show, Minister.

**Hon. John Milloy:** It was us working together to do it. It was ultimately the Minister of Energy who determined that these documents were sensitive in nature, and they sought assistance from our office.

**Mr. Gilles Bisson:** So the final decision-makers were the Minister of Energy, your office and the Premier's office, if I understand what you said correctly.

**Hon. John Milloy:** The final decision-makers were the members of the committee, but we had worked with the members of the committee because we were trying to advise them.

**Mr. Gilles Bisson:** As to your strategy, the decision-makers on the strategy were the energy minister, you and the Premier.

**Hon. John Milloy:** Well, as soon as the energy minister faced the challenge at committee, we were trying to support him in that.

**The Chair (Mr. Shafiq Qaadri):** Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you. Before I ask you a question, Mr. Milloy, I just want to put on record—because Mr. Delaney raises this in every session—that these plants were put in place as the decision of the Liberal government. They were advised, as has been noted by the former Premier and one of his former chiefs of staff, against the advice of opposition parties. I just want that to be on the record. The mess started with the Liberal Party.

Mr. Milloy, there are very few emails to johnmilloy-mpp@rogers.blackberry.net and a single email from this account related to a media interview. Did you never once email anyone about this matter?

**Hon. John Milloy:** The email that you're referring to is my constituency office BlackBerry. I know that there



have been certain requests for papers that have come through our office, and I don't manage my accounts. In terms of my personal habits, despite my youthful appearance, I am not a BlackBerry guy. Mr. Bisson will tell you about my office set-up. Dave Phillips, my chief of staff, was literally right beside me as a door to go through, so most of it was done on discussions that went through.

**Mr. Peter Tabuns:** Was that email account searched and included in this whole document-gathering process?

**Hon. John Milloy:** As you know, in the document-gathering process, there have been a number of different motions that have come from this committee. I don't manage my own accounts. I know there have been searches done of various accounts that I'm responsible for, but I can't answer specifics.

**Mr. Peter Tabuns:** And was johnmilloy@rogers.com searched for emails relevant to this committee?

**Hon. John Milloy:** You quoted johnmilloy@rogers.blackberry—

**Mr. Peter Tabuns:** At rogers.com, yes. There was an email in this package that came from that account.

**Hon. John Milloy:** Yes, that is my personal—

**Mr. Bob Delaney:** Chair?

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** Chair, I'd like to raise what I think is a very important point of order on this. I respect Mr. Tabuns's privilege to ask a question, but not when it comes to spontaneously divulging personal information pertaining to either the witness or to any third party, because this is one area that as a committee we have, to date, stayed away from.

**Mr. Peter Tabuns:** I hope you've stopped the clock, Mr. Chair.

**Mr. Bob Delaney:** I hope so too.

We have stayed away from it. We're not interested in searching your personal email accounts. I don't think they are germane, nor, I would suggest, are the personal email accounts of our witnesses or our committee members. I would ask you please to exercise some caution in where you're going with this so that this doesn't turn out to be the kind of spitting match that it could potentially be.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, we appreciate your point. We appreciate the concerns with reference to privacy, but these are now, I believe, contained within public documents, and I think that's the actual intent.

**Mr. Bob Delaney:** Chair, that's not the point. Those emails that are part of the public record are fine.

**Mr. John Yakabuski:** Don't argue with the Chair.

**Mr. Bob Delaney:** The point I'm raising is that if an email from a non-responsive account is sent to a government email, that part of the email is properly part of the public record. But the committee's jurisdiction does not extend into a fishing expedition into personal email accounts belonging to anyone who has testified before the committee or anyone who is before the committee or to anyone on the committee.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Tabuns, the floor is yours.

**Mr. Peter Tabuns:** Thank you. Mr. Milloy, we have many draft versions of letters from Chris Bentley in regard to this matter, yet we have almost no drafts from you on letters related to this matter and no instructions to drafters. Can you explain why there is so little in the written record from you?

**Hon. John Milloy:** Because I was not involved in the drafting of that letter.

**Mr. Peter Tabuns:** Or any other letters related to this matter?

**Hon. John Milloy:** Obviously, there are letters on file that I sent as government House leader, but in correspondence between the minister and the committee, I can't speak for my staff, who I know were in constant contact with his office, but I was not involved in the drafting of any of the correspondence from Mr. Bentley to the committee.

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**Mr. Peter Tabuns:** Or any other correspondence to staff or cabinet about this matter?

**Hon. John Milloy:** I mean, obviously there were letters that I drafted as government House leader. I believe, for example, Minister Bentley's statement—his point of order that he made the same day that I made a point of order. A staff member may have shown me, for my information, what he was going to say. But I certainly was not involved in drafting them.

I don't mean to paint an imperious picture of myself, but I was Minister of Community and Social Services, I was government House leader, there were numerous committees meeting—I did not micromanage this file. Chris Bentley is a very capable and talented individual, and I had nothing to do with his doing that.

**Mr. Peter Tabuns:** On a last question, before we run out of time, the Ministry of Government Services told the Information and Privacy Commissioner that they could not recover emails when she asked, and yet we were able to find a number of emails that were of consequence to this committee. What went on?

**Hon. John Milloy:** Well, the deputy minister, I understand has had a chance to testify here. He has also expressed his regret, I believe, an apology to the Information and Privacy Commissioner. Everyone worked in good faith to find those documents, and there were mistakes made—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. The floor now passes to the government side for a final 10 minutes.

**Mr. Bob Delaney:** Thank you, Chair. In the interest of fairness, if Mr. Milloy would like to finish answering Mr. Tabuns's question.

**Hon. John Milloy:** Yes. I believe that Deputy Costante has been in front of the committee. Everyone worked in good faith to work closely with the Information and Privacy Commissioner. They admitted that there were issues around not following up on certain potential leads to find other sources of emails. There has been a



public exchange of correspondence, and we continue to work very closely with them.

**Mr. Bob Delaney:** Okay. Thank you.

Mr. Milloy, how many times was Geoff Janoscik invited to appear before this committee?

**Hon. John Milloy:** Oh, he was invited numerous times—I would have to check my notes from question period, but numerous times, and I understand he has said, “Stop calling me.”

**Mr. Bob Delaney:** Okay. From your vantage point of having been this intimately involved in the evolution of the issue, what type of questions, if you were sitting here, would you like to ask the PC candidate in Mississauga South if he were to finally agree to come to the committee?

**Hon. John Milloy:** I think that there is an issue around the very aggressive promise by Mr. Hudak that if he became Premier, he would cancel the plant. We’ve seen a situation where all parties agreed that the plant should not have been there. Had they formed government, they would have cancelled it.

And yet, the standard that the Progressive Conservatives, in particular, and the NDP to a degree, have held us to is that they demand the costing, the analysis and the work that was done. I guess what I’m confused about is that when we ask them the same question, because they made the exact same—

**Mr. John Yakabuski:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, point of order.

**Mr. John Yakabuski:** If I turn to the order of the House, dated March 5, 2013:

“(6) Ordered, that, pursuant to standing order 110(a), the Standing Committee on Justice Policy shall be authorized to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants;”

Chair, that is the mandate of our committee. It is not to go into la-la land and find out what some candidate for political office may have spoken about during a campaign. It is about: Find out.

So my question would be, Chair, as a point of order, Mr. Janoscik or anybody else who is not part of this scandal-plagued government would have no knowledge whatsoever that they can offer, nothing they can offer this committee to assist in following the order of the House, dated March 5, 2013.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski, for your point of order, which is duly considered by the table officers and your Chair. I would refer you to point 6 in the same document from which you just quoted, and with reference to the word “cancellation,” I think that can also be construed, these questions with reference to the PC candidates, as part of the overall motivation for cancellation. I believe that is the ruling not only of the Chair but of the collective wisdom embodied here.

Mr. Delaney, the floor is yours.

**Mr. Bob Delaney:** Thank you, Chair. It was our point exactly.

Sorry, Mr. Milloy. You were talking about the type of questions we’d like to ask Mr. Janoscik about the PC commitment to cancel the Mississauga and Oakville gas plants.

**Hon. John Milloy:** I was just actually, as an aside, chuckling at Mr. Yakabuski’s point of order, after his colleague asked me to discuss the briefing of a document that I never signed in a meeting that I never attended. I think your question is a bit more relevant about a PC candidate who surely, with the level of drama that we’ve seen across the way around the whole issue of costing—presumably Mr. Janoscik would have been on the phone as soon as the promise was made, or when he was presumably given a heads up about the promise, to ask about the costing, to express his concern, I would assume, the same way we were held up to that account, and to have offered his advice and insight, and obviously consulted with the policy experts that I’m sure Mr. Hudak had consulted with before he made that promise that we can now watch on YouTube.

I think it is relevant to find out. There is a standard that has been created by the opposition that this would somehow be irresponsible to have gone into an election campaign and to have said to the citizens of these communities, “We realize a mistake was made and if—if—we are to win re-election we will cancel it,” without having the full body of information. That is part of what has driven the Progressive Conservative Party, and I think it’s very relevant to ask the candidates the costing they were aware of and the analysis that took place.

**Mr. Bob Delaney:** Okay. Thank you.

Chair, while we’re at this, I’d like to table with this committee Mr. Milloy’s Hansard from Mr. Smith’s point of privilege, where he clearly explained when he learned about the additional documents and immediately corrected his record.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Those will be distributed momentarily.

**Mr. Bob Delaney:** Mr. Milloy, to come back to it, you’ve faced a bit of a hard time here, where they’ve suggested that somehow or another somebody was orchestrating some sort of a campaign. But I can remember reading a letter from the official opposition House leader that said, in part, and I’m going to quote it exactly, “It is our position that the documents should be tabled”—the documents, of course, referring to those requested by the estimates committee—“in the Legislature unedited and unredacted.”

At the time, the Oakville deal was not yet finalized when the opposition House leader sent this letter, which suggests that the opposition, as you’ve said, were not interested in a compromise, and reinforces the fact that when it came to protecting the public interest, to be charitable, they may have been reckless.

Would you like to comment on that?

**Hon. John Milloy:** Minister Bentley raised a legitimate point. I cited the Auditor General in his testimony



before the committee in early September. There are numerous examples where experts testified that the release of these documents could be harmful to the taxpayers.

As I say, there's nothing new about this; there are numerous precedents. We were prepared to find a way forward, to work with the opposition and find a way in which the committee could look at them in such a way that it did not affect the public purse.

As I say, what frustrated me is that there was nothing new here. We were not going to be pioneers. They weren't going to write about us in the procedural books because this is something that's done all the time. And yet the opposition refused to engage. The opposition refused to acknowledge their responsibility to balance them. That's what's so frustrating.

You know, I would have a much different attitude here today if we had worked out something with the opposition and there was a judge and a lawyer and something was sealed and things were here and it was in camera, and at the 11th hour and 59th minute it all fell apart because we didn't want a judge and they did and all that. I think I'd have a much different attitude. We never had that discussion. Our final meeting lasted five minutes. I drove for two hours to come in, and they said, "No," and I think their basic attitude was, "We'll wait to run out the clock." I said over and over again, "Put something on the table."

**Mr. Bob Delaney:** Day one, hour one of the committee, Peter Milliken was our first witness. This was in March. He told the committee that if Minister Bentley had complied with the order to produce the documents, he didn't understand how there could be any form of a breach. You've worked in Ottawa. You've worked in that environment. Given that the order to produce the documents was in fact complied with, in your opinion, is there any substance left for the opposition to pursue an allegation of contempt against then-Minister Bentley?

**Hon. John Milloy:** No, and I think it's very important to read the Speaker's ruling. I commend it to everyone around the table. *Prima facie* means on the surface; it means that there is a potential of it. But when you look at what happened, the committee report dealt with the issue, a request, in a sense, to the House or a report to the House, about the fact that they were not getting access to these documents.

There was a point of privilege from Mr. Leone, but the Speaker in his ruling agreed that the committee had the right to the documents, and asked that those documents be produced by a certain date—September 24, if my memory serves me correctly—and at the same time said, "Look, the House leaders have a week to try to work out a process." We couldn't work out a process, so we released the documents.

I sent a letter to the Speaker that morning or, I believe, the following morning, Tuesday, which was shared with

the other members, to say, "Look, they asked for the documents. We are producing the documents." In my speech in the House on the 25th I said that there may be an expectation that I would come forward with huge parliamentary tomes and all sorts of authorities where I would be able to say, "Look, it's for this reason that Mr. Bentley shouldn't be found in contempt." You didn't need all the parliamentary tomes. You need logic. The Speaker said, "The committee has a right to the documents. Please deliver the documents," and we delivered the documents.

All Mr. Bentley did throughout the summer was try to deal with these competing interests. That was it.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Hon. John Milloy:** At the end of the day, he did produce those documents. So when I look at the charge to this committee to look into it, I don't think there's a basis for contempt here.

To go back to a comment that I made earlier: I think the committee has very, very important work in terms of the other bucket of issues it's been asked to look at around the siting of plants and making sure that our government and future governments don't make the types of mistakes that were made in Mississauga and Oakville that had to be rectified by the moving of those plants to other locations.

**Mr. Bob Delaney:** Thank you, Minister Milloy.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, and thanks for your presence and testimony, Minister Milloy. The floor goes to Mr. Bisson.

**Mr. Gilles Bisson:** Well, I just want to say that—

**The Chair (Mr. Shafiq Qaadri):** Mr. Milloy, you're officially dismissed. Thank you.

**Mr. Gilles Bisson:** You can stay and listen if you want.

The point I want to make is this: It's an interesting line of argument that's put forward by the government House leader, but let me give you an analogy. If a judge at the Superior Court or Divisional Court was to say, "I need you to provide evidence," or "I need to give you documents," or "You need to appear before the court," and the person refuses, they would be found in contempt. So an order would be issued by the judge in order to force the person to come.

The argument that the government House leader makes says, "But eventually I came." The point is, the estimates committee requested documents and the government never produced them until after there was a *prima facie* case of contempt found. So I just find that whole explanation rather interesting—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bisson, for your edification. The subcommittee meeting is put off till a future date, presumably Thursday.

If there's no further business, committee is now adjourned.

*The committee adjourned at 1644.*











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Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 3 October 2013

# Journal des débats (Hansard)

Jeudi 3 octobre 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

Privilèges des députés



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 3 October 2013

Jeudi 3 octobre 2013

*The committee met at 0831 in room 151.*

## MEMBERS' PRIVILEGES

MR. GREGORY VOGT

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I call the Standing Committee on Justice Policy to order. I invite our first presenter to please come forward, Mr. Gregory Vogt, president of Eastern Power Limited, who will be sworn in by our very able Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Gregory Vogt:** I do.

**The Chair (Mr. Shafiq Qaadri):** Welcome, Mr. Vogt. Your five-minute opening address begins now.

**Mr. Gregory Vogt:** Thank you. I'm Gregory Vogt, president of Eastern Power. I was president, I think, in the period in question when this committee seems to be interested. Thank you for having the committee so close to my daughter AlanaSophia's school, just across the street, St. Joe's. I'm sure she'll be watching this and enjoying this as we go. I'm available for your questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Vogt. We'll begin with the NDP. Mr. Tabuns, the floor is yours.

**Mr. Peter Tabuns:** Good morning, Mr. Vogt.

**Mr. Gregory Vogt:** Good morning, Mr. Tabuns.

**Mr. Peter Tabuns:** When did you first sign a contract for the two Greenfield power plants?

**Mr. Gregory Vogt:** That would be back in 2005, I believe.

**Mr. Peter Tabuns:** When you signed these contracts, had you had experience building large facilities like this or doing community consultation?

**Mr. Gregory Vogt:** We had had experience building facilities. The type that we proposed would have been our largest project at that time. We had never built a project to that size. Mind you, we had experience within our staff members who had built projects much larger than that.

**Mr. Peter Tabuns:** But your company, what was the largest project you had built previous to bidding on these?

**Mr. Gregory Vogt:** Thirty megawatts.

**Mr. Peter Tabuns:** Okay. With whom did you negotiate the contract?

**Mr. Gregory Vogt:** There actually wasn't a negotiation of a contract. The contract was a standard form. There was a process that was created in advance, and everybody sort of knew what the contract was. I think it was posted on the Internet. There really wasn't a negotiation, per se.

**Mr. Peter Tabuns:** Who did you sign the contract with? Who was the counter-party in this?

**Mr. Gregory Vogt:** Ultimately, it was the Ontario Power Authority, but I think at the time there was that transition where the Ontario Power Authority was being created, so the ministry was still involved. There was a transition there somewhere.

**Mr. Peter Tabuns:** Greenfield North didn't go forward. Why was that?

**Mr. Gregory Vogt:** There were two projects that we did sign. The other project, we mutually agreed with the ministry that we would not go forward with that project.

**Mr. Peter Tabuns:** Why on your end didn't you go forward with it?

**Mr. Gregory Vogt:** With the project that we did go forward with?

**Mr. Peter Tabuns:** No, why didn't you go forward with Greenfield North, from your end?

**Mr. Gregory Vogt:** There were difficulties in terms of arranging the financing.

**Mr. Peter Tabuns:** Okay. You were able to secure financing for Greenfield South?

**Mr. Gregory Vogt:** We were, yes.

**Mr. Peter Tabuns:** JoAnne Butler testified that the OPA didn't assess your financial backing when the company filed a proposal. What happened to that financial backing you had for Greenfield South?

**Mr. Gregory Vogt:** It didn't materialize the way we expected.

**Mr. Peter Tabuns:** What does that mean? You had been made commitments by a financial backer, and they declined to back you at a later date?

**Mr. Gregory Vogt:** Effectively, things changed over the course of that contract award and the signing of the contracts such that when it came time to put up performance security, some of the people that we had been counting on did not come through with what we expected.

**Mr. Peter Tabuns:** So by what year had the financing lapsed? If you had signed around 2004, when did your funding stop being in place?

**Mr. Gregory Vogt:** Are you talking about the project that did not go ahead?

**Mr. Peter Tabuns:** I'm talking about Greenfield South.

**Mr. Gregory Vogt:** Well, Greenfield South did go ahead. I'm not too sure what you mean by "it lapsed." That didn't lapse. The contract did go ahead. We did put financing in place.

**Mr. Peter Tabuns:** The financiers who were backing you when you put in your proposal were the same as the ones that you had when you went forward in 2011?

**Mr. Gregory Vogt:** No, that changed. Through the financial crisis, a lot of the banks completely revisited what they were prepared to do and what they weren't prepared to do. It was a completely different world over that process. It was many years. The permitting took a long time to put in place and things did change. Therefore, we did have different financial backers when we finally closed the financing in 2011.

**Mr. Peter Tabuns:** You had a signed purchase agreement with the OPA for power in 2009. It took almost two years for you to get financing. Why was there that difficulty?

**Mr. Gregory Vogt:** Actually, the delays in that period were permitting; they weren't really financing. We had a lot of difficulty with the city of Mississauga. Initially, we got a letter from them saying that we were zoned correctly when we bid for the project. We picked a site where the zoning was good and the city said, "Yes, you're good to go." They changed their mind on that and we had an OMB process which was quite extensive. Of course, during that process a lot of commitments that we had on financing had lapsed and we had to go back out into the market and arrange financing after that process completed.

**Mr. Peter Tabuns:** So things didn't come to fruition at the time you had expected them to come to fruition. Financiers simply said at some point, "It doesn't look like it's going ahead right now. We aren't going to be continuing with this financing." Is that correct?

**Mr. Gregory Vogt:** Often, financial backing has a time clock on it. They say, "We're good to go for this period," because they have their own business plans, and their business appetite and whatnot also changes over time. Because of the delay caused by the city of Mississauga—which was, as I said, very extensive—those financial commitments had lapsed.

**Mr. Peter Tabuns:** When you did get financing for the construction phase, the Auditor General reports that you were paying 14% interest, compounded quarterly, on the money you were drawing.

**Mr. Gregory Vogt:** That's correct.

**Mr. Peter Tabuns:** So about 60% a year.

**Mr. Gregory Vogt:** No, 14% compounded quarterly is not 60% a year. It's a little bit over 14%, but not much more. It's not 14% a quarter; it's 14% per annum, except that you calculate it each quarter. Because of that compounding, it's a little bit higher than the 14%, but not much.

**Mr. Peter Tabuns:** Why did this whole question of a criminal rate of interest keep intruding on discussions?

**Mr. Gregory Vogt:** Again, I'm not an expert in this area, but my understanding is that with the additional cancellation fees on a financing package, it's not unusual to have—if you back out of financing that you take and no longer want, it's similar to having a mortgage. If you want to get out of your mortgage ahead of time, sometimes there are cancellation fees that you have to pay. If those fees are large compared to the amount of interest you've already paid—to give you an example, if you had a mortgage on a house and you wanted to cancel it the day after you took out the mortgage, the cancellation fee may be a month's worth of interest. If you've only had the mortgage out for one day, then that fee could drive your interest rate up above 60%. That's sort of what happened there.

**Mr. Peter Tabuns:** And that then was the penalty on this. It amounted to approximately 60% per annum.

**Mr. Gregory Vogt:** I don't know whether it amounted to that, but that's where that discussion was. I think there actually was an argument that it was higher than that number, that the penalty fees amounted to a number that would equate to higher than 60% interest. The loan had not been outstanding that long.

**Mr. Peter Tabuns:** No, it was a very short while.

**Mr. Gregory Vogt:** Similar to my example of a house mortgage, if you cancel very close to the start of a loan the cancellation costs can be quite significant compared to your interest costs, putting you in a very strange position. Banks specifically try to do those sorts of things so that you don't have people walking away or cancelling mortgages shortly after they start them, because they do all the work to get into them and their opportunity to earn money is then over the term. If you're basically eliminating the term, they never get a chance to make any money. That's why these penalty fees, as you call them, are often put into lending agreements. It's not an unusual situation.

**Mr. Peter Tabuns:** But they're extraordinarily high. There were quite a few legal arguments, and we've seen documentation, that the Criminal Code seemed to prohibit the level of interest or penalty that you were being asked to pay.

**Mr. Gregory Vogt:** I don't disagree that they were high per se, but your comment that they're unusual—in almost all the financing agreements that I've seen there is some form of that, and depending on when you cancel an agreement you can be in that situation. There's often a clause put in those lending agreements that says if those fees are deemed to be interest, then it simply becomes 60% so that you're not in violation of the law because no lender wants to be in violation of the law. That was similar in this agreement. There was a similar clause that said that if it's deemed to be interest and therefore over the criminal rate, then it'll simply become the 60%, or whatever, the 59% that's allowed. I'm not too sure exactly where that limit is, but it's right there at 60% somewhere.

0840

**Mr. Peter Tabuns:** Okay. When you submitted a proposal to the Ministry of Energy for the Greenfield



South plant, what permissions did you have to secure to go forward?

**Mr. Gregory Vogt:** All of them. If I can broadly—

**Mr. Peter Tabuns:** Building permit, environmental assessment—

**Mr. Gregory Vogt:** The big one is the environmental screening you have to go through. You have to do an environmental screening. So you have to do a public consultation; you have to present the findings of your environmental studies back to the ministry; there's a comment period for both the public and the government; the various agencies are all canvassed—everything from NAV Canada to aboriginal groups, so a broad canvass of all the issues with all the agencies. That's the big one you do initially, and at that point you sort of touch all the governments per se, and the agencies and stakeholders. Then there are final permits—things like building permits—which tend to be more following the building code and things like that, which have to be obtained as well.

**Mr. Peter Tabuns:** Did you have to do a public consultation before you submitted your proposal?

**Mr. Gregory Vogt:** There just had to be a notification that you were going to submit a proposal on that site, which was done. That was a requirement. I think all the proponents did that.

**Mr. Peter Tabuns:** Did you get any public response to that notification?

**Mr. Gregory Vogt:** I believe we did. I don't think there was a lot, but I think we did get some public feedback.

**Mr. Peter Tabuns:** I assume you were given a contract.

**Mr. Gregory Vogt:** That's correct, in 2005.

**Mr. Peter Tabuns:** So once the contract had already been given, then you had to do a public consultation?

**Mr. Gregory Vogt:** That's correct.

**Mr. Peter Tabuns:** What was the object of the public consultation if you already had the contract and the project was going forward?

**Mr. Gregory Vogt:** Well, there wasn't a promise that the project would go forward. The contract was the opportunity to seek permits. There was no guarantee that the permits would be issued. You had to go and prove you were eligible and you could get those permits. That was the proponent's job, to go through that process, and if there was a fault found in any of that—for instance, if you were going to build something that didn't follow the building code or you were going violate some sort of environmental law or limit—then obviously you would not be able to go ahead. So it was a test to make sure you were in compliance and followed the science and the environmental laws of the province.

**Mr. Peter Tabuns:** Did it ever occur to you that if you had difficulty with the municipality or with the Ministry of the Environment, you could go to cabinet, you could go to the Premier's office and ask them to overturn any decision at the municipal level?

**Mr. Gregory Vogt:** I don't recall any such thoughts, no.

**Mr. Peter Tabuns:** So you assumed the whole risk of getting the necessary permissions—building permits, environmental assessment, zoning, etc.—before you went forward?

**Mr. Gregory Vogt:** Well, maybe you're alluding to the clause in the contract that said something about if the government changed legislation to make it impossible for you to go ahead, then there'd be some relief; they could deal with that.

**Mr. Peter Tabuns:** You mean the provincial government?

**Mr. Gregory Vogt:** Yeah. There was some clause that if they changed the laws in some way or if there was legislation that would put you at a disadvantage, they would then compensate you for that. I think they were concerned that if you—this was a contract for differences, and a contract for differences basically allows you to compete with your electricity in the market. There's a base payment that's sort of guaranteed, but if you're making good money in the market, then the payment you get from the government is reduced, but there's an opportunity to make beyond those payments.

For instance, if you're in a constrained area, in an urban area where power is needed and they need you to run because they can't get the power in there, then sometimes there's the higher local price and that higher local price is an incentive for people to site where power is needed. Therefore, let's say the government changed the rule, that there was no such thing as a constrained price. A proponent would object and say, "Look, I'm not getting my value out of the contract the way I anticipated."

**Mr. Peter Tabuns:** That's fine, but I just want to go back: It never occurred to you, and it was never suggested to you, that if you were having difficulty with municipal zoning, you could ask the government of Ontario to step in and override the decision?

**Mr. Gregory Vogt:** I don't recall such a discussion with anybody, if that's what you're asking me.

**Mr. Peter Tabuns:** That's fine. What public reaction did you get from the local community in Mississauga when you had your consultation?

**Mr. Gregory Vogt:** We had an open house. I thought that went very well. The comments that we had from the community were—and I think that's all a matter of public record, because we published our comments and whatnot. There were some people who were concerned, especially the people who were in some of the neighbourhoods where other plants, which weren't successful, had been proposed.

I remember that the Applewood people, who were many kilometres away, had a large representation, and they were particularly concerned about the plant, even though they were arguably upwind and a significant distance away. But because they'd organized against a number of other proposals, this was sort of the natural result of that.

I also recall there was a large public meeting, that initially we weren't invited to, that the local ratepayers



organized. We indicated to them, since we'd invited them to our public consultation, that we'd like to have a chance to present, and we did present. Actually, one of our project managers got a standing ovation after he presented what he was going to do in terms of building the project, and the pride that he was going to bring to Mississauga as a Mississaugan building a plant in Mississauga.

I thought the reaction was somewhat mixed. The news response from that—one of the environmental groups actually stood up and said this was a good project and was something worth doing. So, yes, I would describe it as mixed.

**Mr. Peter Tabuns:** And whether it was positive, mixed or negative, would those consultations have any impact on whether you went forward or not?

**Mr. Gregory Vogt:** It depends on what comes out of the consultation. I mean, you really have to read the consultations for what they're worth.

**Mr. Peter Tabuns:** And did you have to show to the OPA that you had public support, to be able to go forward?

**Mr. Gregory Vogt:** I don't believe there was a requirement for public support. You had to be able to get your permits. You basically had to execute according to the laws of the land. I mean, there wasn't some sort of discretionary ability to show that the community wanted you.

**Mr. Peter Tabuns:** Okay. In 2010, you must have noticed that the Oakville plant had been cancelled.

**Mr. Gregory Vogt:** Yes, we certainly heard about the cancellation of the Oakville—

**Mr. Peter Tabuns:** Did you think this would have any implications for your project?

**Mr. Gregory Vogt:** We were a little bit unsure of what it meant for our project. Cancellation of projects is never, in our opinion, a good thing. When projects like that are cancelled, it's not stability. It's hard to build a province that way.

**Mr. Peter Tabuns:** Did you talk to the OPA or to local politicians about this at the time?

**Mr. Gregory Vogt:** I can't recall. I mean, it was a long time ago.

**Mr. Peter Tabuns:** So in the summer of 2011, were you approached by the Ministry of Energy, the OPA, any representatives of the Liberal Party, any locally elected MPPs, prior to the announcement that the plant wasn't going to go forward, on September 24, in the middle of the election campaign?

**Mr. Gregory Vogt:** I'm not too sure, exactly, of your question. Were we contacted by who?

**Mr. Peter Tabuns:** The Ontario Power Authority, the Ministry of Energy or locally elected MPPs, in the summer of 2011, while your plant was under construction, suggesting to you that the plant might not go forward.

**Mr. Gregory Vogt:** I would say, generally, no. I don't recall any such meeting or conversation.

**Mr. Peter Tabuns:** Once the announcement was made on September 24, did you contact the Ministry of

Energy? Did you contact the Liberal Party and ask them what was going on?

**Mr. Gregory Vogt:** I wasn't in the country at the time, so, no, I didn't contact anybody.

**Mr. Peter Tabuns:** Did anyone in your company contact them?

**Mr. Gregory Vogt:** I'm not too sure.

**Mr. Peter Tabuns:** So an announcement is made that your project, that you've invested years into, is not going forward, and no one from your corporation checked to see what this announcement made on September 24, that you weren't going forward, was going to do?

**Mr. Gregory Vogt:** Well, I didn't say nobody from the company checked. You're asking me—for me to tell you exactly what happened over those days—I can't tell you. I wasn't in the country, so I wasn't able to follow the day-to-day activities. I know that there were a number of announcements. I know that, at some point, the OPA did contact us to talk about it, about what was going on and what would go on. And we waited.

**Mr. Peter Tabuns:** And you waited.

**Mr. Gregory Vogt:** Well, because they didn't have too much to say, initially.

**Mr. Peter Tabuns:** So when were you first contacted by the Ontario Power Authority or the Ministry of Energy?

**Mr. Gregory Vogt:** There were regular visits to see what our project was up to, and I do believe they did some visits around that time, so they knew how far we were in terms of construction and whatnot. There was contact and discussion.

But my recollection—again, that's a ways back—was that, you know, there wasn't any clear direction in terms of what exactly was going to go on. Even on the political announcement side, there was a lot of back and forth. That was my understanding.

0850

**Mr. Peter Tabuns:** And did you discuss the fact that your construction was going on and they were concerned because they wanted this plant stopped?

**Mr. Gregory Vogt:** I know that they came out to the site at some point and they did talk about that, that they wanted to have the construction stopped, yes.

**Mr. Peter Tabuns:** And what was your response to that?

**Mr. Gregory Vogt:** Well, we were very concerned. This was not good news for us.

**Mr. Peter Tabuns:** So once the election was over, when did the government first come to you and say, "We have to negotiate on this. We have to stop this plant"?

**Mr. Gregory Vogt:** Well, I don't think the government ever came to us and said that. I don't recall the government ever coming to us with that. All our contact was through the OPA.

**Mr. Peter Tabuns:** When did the OPA first come to you?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Gregory Vogt:** I don't have exact dates for you, but it was some weeks after that.



**Mr. Peter Tabuns:** What was their message and how did you respond to them?

**Mr. Gregory Vogt:** That we were very concerned and that it was not a good day.

**Mr. Peter Tabuns:** And you continued building?

**Mr. Gregory Vogt:** They told us they'd like us to stop, but that was all they were able to tell us, and we had obligations.

**Mr. Peter Tabuns:** And what were the risks that you faced in stopping construction?

**Mr. Gregory Vogt:** Being in default on a whole number of agreements with a whole number of parties.

**Mr. Peter Tabuns:** And you made the OPA aware of that at the time?

**Mr. Gregory Vogt:** Oh, they were fully aware of that, of course.

**Mr. Peter Tabuns:** At what point did you effectively become partners with the OPA, fighting EIG?

**Mr. Gregory Vogt:** I guess late in 2011, or somewhere in that transition period.

**Mr. Peter Tabuns:** And what was the—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. The floor passes now to Mr. Delaney of the government.

**Mr. Bob Delaney:** Good morning, Mr. Vogt.

**Mr. Gregory Vogt:** Good morning.

**Mr. Bob Delaney:** I'd like to pick up on some of the things Mr. Tabuns started. Following the blackout in the summer of 2003, the Ontario Ministry of Energy issued a call for proposals to ensure that in the event of a heavy demand on the system, that southwest GTA area—which means, for all practical purposes, Mississauga and Oakville—would have some generating capacity. Could you tell me a little bit about your understanding? First of all, were you in your present position in the 2003-04 period?

**Mr. Gregory Vogt:** I was.

**Mr. Bob Delaney:** Okay. Were you involved in the response to the request for proposals?

**Mr. Gregory Vogt:** I was.

**Mr. Bob Delaney:** What was your understanding of the power situation when you responded to the request for proposals in 2004?

**Mr. Gregory Vogt:** It was dire. I mean, when you took the electrical analysis across the grid—I like to think of it as sort of a map where the areas that are low have problems and the areas that are high are strong. Basically, the area that we finally selected as our site was like a big sinkhole. It needed support and stabilization. You can call it low-quality power that was being delivered there. The voltage, the frequency, all of that stuff was not good in that area. They needed support there.

**Mr. Bob Delaney:** How did you pick the site?

**Mr. Gregory Vogt:** Because the need was there, we then looked at what Mississauga said were good sites for power plants. We quickly established, from a zoning and planning point of view, what the city was saying were good sites for power. We contacted the city and talked to them about it. They said, "Yes, those sites are good to go." We then found a piece of property that was within

that zoned area that was for sale. We then got an option agreement on that property and prepared a bid.

**Mr. Bob Delaney:** So in other words, the Mississauga site was selected by your firm, Eastern Power?

**Mr. Gregory Vogt:** Correct.

**Mr. Bob Delaney:** And it had been zoned—what was the zoning at the time from the city of Mississauga? Do you recall?

**Mr. Gregory Vogt:** They have these letters, and they change them over the course, so I couldn't tell you what they are. E2 and M2 are numbers that float around in my mind, but I'm not too sure exactly what the designation was. It was like a heavy industrial designation. I mean, there was a meat-packing plant, a lead smelter and a railroad track. The only thing we were missing was the prison.

**Mr. Bob Delaney:** At the time, in 2004, what was the situation with regard to neighbourhoods in proximity of the site that Eastern Power chose for the peak power plant?

**Mr. Gregory Vogt:** Well, it was nicely isolated. As I said, we did have those other neighbours that were generally on the rougher side, if I can describe it that way, and therefore we thought it was actually a good fit. Arguably, I thought we would actually lead, in a sense, to an improvement in the look of the neighbourhood. There are second-tier-type industrial facilities that are down the one road, so we thought it would probably make a good site. The city of Mississauga zoning people agreed with us.

**Mr. Bob Delaney:** Was the Ministry of Energy at that time, in 2004, involved in any way in the selection of the site?

**Mr. Gregory Vogt:** They were not.

**Mr. Bob Delaney:** What were the advantages of the project that you proposed with regard to such things as air quality at that time when you responded to the RFP in 2004?

**Mr. Gregory Vogt:** Since the entire effort was to get off coal—because coal is, of course, a bad actor in our environment. Certainly the mercury level in my kids' blood is high because of the coal that we burn in this province. Natural gas is a good-news story from an environmental point of view. The story I like to tell is that this morning I cooked my eggs over a natural gas flame. I could sit there my whole life and eat my eggs that way and I would not suffer any negative impacts, despite burning natural gas in my kitchen, whereas if I pull my car into my kitchen and turn it on, in 20 minutes I'm dead. So it gives you sort of an idea in terms of the order of magnitude of what a great fuel natural gas is. We felt that replacing the Lakeview Generating Station with natural gas, which was effectively, in a sense, what we were proposing to do because we were not too far away from the Lakeview area—that plant was coming down; it was weak electrically. There was a big, strong need. These types of facilities are often built in urban settings because of the great environmental story that they have. We thought it was a good fit.



**Mr. Bob Delaney:** Although you and I know, just for the purposes of the record, the fuel that the Lakeview Generating Station burned was—

**Mr. Gregory Vogt:** Coal.

**Mr. Bob Delaney:** Thank you. The proposed size, the proposed generating capacity of the plant would have been—

**Mr. Gregory Vogt:** Three hundred megawatts.

**Mr. Bob Delaney:** Okay. And the intent of the plant was that it would not be a base-load generating station. Correct?

**Mr. Gregory Vogt:** That's right. We basically saw it as a peaking or shoulder-type operation, because basically it would come on when the electricity and the gas price would dictate. So you would generally be running, as I said, a peaking, shoulder-type operation.

**Mr. Bob Delaney:** A peaking and shoulder-type operation, which I understand and you understand. Perhaps you could explain in layman's terms what proportion of the time during the year and at what times during the year, typically, a plant like the proposed Greenfield South would operate.

**Mr. Gregory Vogt:** A base-load plant, of course, runs a base load, meaning 100% of the time or very close to 100%. A peaking plant tends to run 5% to 10% of the time. Shoulder plants are a little bit higher than that.

**Mr. Bob Delaney:** Just to come back to the zoning, the only source that you would have had to know whether or not you could have used that site to build a power plant would have been the city of Mississauga's official plan. Right?

**Mr. Gregory Vogt:** That's correct.

**Mr. Bob Delaney:** How many versions of the official plan did you look at? Do you recall?

**Mr. Gregory Vogt:** That wasn't exactly my area. I mean, I was generally aware of it, but—

**Mr. Bob Delaney:** But it's fair then to say that before having submitted the proposal, your firm was certain that the plant was zoned, to quote from the zoning at the time, "industrial/power plant"?

**Mr. Gregory Vogt:** Not only that, but we actually got a letter from the city indicating that we were good to go and that the site would work for us. We wanted more than just our own opinion. We wanted them to confirm that we were good, so we did get a letter from the city saying that this would be consistent with their zoning understanding.

**Mr. Bob Delaney:** May I ask you please to table with the committee that letter so that it can be part of our record?

**Mr. Gregory Vogt:** I'm not too sure if we still have that, but it's something I could look into.

**Mr. Bob Delaney:** Okay. What date would the letter have been written to you?

**Mr. Gregory Vogt:** Back in 2004-05.

**Mr. Bob Delaney:** So end of 2004, something like that?

**Mr. Gregory Vogt:** Something like that.

**Mr. Bob Delaney:** Okay. If that site had not been zoned "industrial/power plant" in the city of Mississauga's municipal plan, would you or could you have chosen that site to build a generating station?

**Mr. Gregory Vogt:** I think that would have been foolhardy.

**Mr. Bob Delaney:** After you received the permit to build the plant in 2006, the city of Mississauga initiated a review of their official plan and then appealed your contract to the Ontario Municipal Board. Having secured a letter from the city of Mississauga confirming, to use your words, that you were good to go, did you feel that the city of Mississauga had changed its mind on you?

0900

**Mr. Gregory Vogt:** Oh, absolutely. There was an about-face there.

**Mr. Bob Delaney:** By the city of Mississauga?

**Mr. Gregory Vogt:** By the city of Mississauga. They basically said they didn't agree with that letter anymore, they had a different view on it. In layman's terms, because I'm not a planner, they reinterpreted their own official plan and zoning so that they said no, it wouldn't work anymore: "We're not going to issue you permits for that site."

**Mr. Bob Delaney:** What was your response?

**Mr. Gregory Vogt:** Ultimately, we took them to the Ontario Municipal Board and said that was inappropriate, because we continued to believe in the original planning view, and we didn't believe they had the right to change that, because generally, when people apply to do something somewhere, you usually are grandfathered with the existing zoning or planning to prevent exactly this sort of situation.

**Mr. Bob Delaney:** What happened at the OMB? Could you walk us through that?

**Mr. Gregory Vogt:** We provided evidence. I mean, we had counsel that took us through that. We provided a planner. We gave our environmental arguments. We had experts on all the various issues. The city had their lawyers and their planner, and had their arguments, as well. Ultimately, the board ruled that we were fully compliant, that our zoning was good, that it was good planning. Basically, I think they actually issued the statement in terms of, "Your planning is good, your zoning is good, and the city has to then follow it."

**Mr. Bob Delaney:** Do you recall the basis on which the board arrived at that conclusion?

**Mr. Gregory Vogt:** Well, my understanding is they looked at the environmental arguments that the city had presented and basically agreed that our arguments won the day and, therefore, it was good planning. There was a need, there was no environmental concern per se and, therefore, they should follow through on the zoning that we'd originally had.

**Mr. Bob Delaney:** In the OMB proceeding, did the matter of Mississauga's original zoning of the site as industrial/power plant play a factor in the decision of the OMB?

**Mr. Gregory Vogt:** I would say it was fundamental.



**Mr. Bob Delaney:** Is there anything else you want to add on your interactions with Mississauga as Mississauga changed its position and you went through the OMB process? Ultimately, then, could you walk us through the process whereby you got a building permit?

**Mr. Gregory Vogt:** Certainly it was a long, drawn-out process. Even on the building permit front, they were not particularly friendly in terms of expediting that. It took a long time for them to actually issue the building permit. So the road in Mississauga was long and difficult through the permitting process and probably the major reason why it took as long as it did to get this project to the stage that we got it.

**Mr. Bob Delaney:** At what point, having gone through the process—roughly what was the date when you realized you would get the building permit and be able to begin construction of the plant?

**Mr. Gregory Vogt:** The building permit was issued in May 2011, so shortly before we saw that, things were coming together for the building permit being issued and whatnot, so probably a high degree of confidence in the spring of that year in terms of things would move forward. Mississauga was aware of all that, because they saw us moving forward with these things.

**Mr. Bob Delaney:** Talk to me a little more about the residents in the surrounding community. When you originally responded to the RFP, there weren't that many homes there, yet by 2011, the area had grown up around you. To what degree did that factor into any of your thinking about whether or not to proceed with construction?

**Mr. Gregory Vogt:** We believed from an environmental point of view it was a good thing. When you looked at the environmental analysis on any of the critical receptors, I would argue that you'd have a hard time knowing if our plant was running or not at any of the critical receptors. So we felt that environmentally we were good all the way through that process. I mean, yes, the area did change a little bit. There were some condominiums that were built down in Sherway and whatnot, and I know the ministry had some issues there. We reviewed those issues and felt that we were still very good and compliant with all of the laws and the rules and regulations concerning environmental emissions. We felt we were good on that, and we knew that there were additional concerns over that and we responded to those concerns.

**Mr. Bob Delaney:** Any difference between the fuel that you would conceivably have been burning at the Greenfield South site and the fuel that residents are burning in their furnaces at home?

**Mr. Gregory Vogt:** It's exactly the same.

**Mr. Bob Delaney:** Okay. Any comments about the opposition and, as you approached the start of construction, how the opposition to the plant grew?

**Mr. Gregory Vogt:** The funny thing was, the opposition seemed to grow during the election. When we started construction, there didn't seem to be any real opposition with the construction per se. I know there was

some political banter when we started construction, but my recollection is they even had a hard time finding a citizens' group to take this on. So there seemed to be a political thing going to try to give it to somebody to run with that ball, if I can describe it that way.

I know the initial picture was a woman standing on our site, and I think this was in the Toronto Star where she says the reason why she's concerned is because her father lives five, six kilometres away in Etobicoke, and she lived even further away. So they seemed to have a hard time getting somebody interested who was local, but eventually I guess they did.

**Mr. Bob Delaney:** Several witnesses have told us that in between issuing the call for proposals in response to the 2003 blackout and the time that construction began, some other fundamental things had changed. For example, there was a new transmission corridor built from the Bruce Peninsula to connect to the big substation up in Milton, which meant there was a transmission solution available. As well, the anticipated growth in demand for power had simply not materialized by about that time that you were beginning construction in 2011. Did the fact that the assumption of the need for power, which you responded to with the RFP, was no longer valid—did you take that into consideration at all?

**Mr. Gregory Vogt:** You're talking about overall system planning. From our perspective, that was not our purview. We weren't there to guarantee the power for the entire province. I would say our focus was to get our contracted facility built.

**Mr. Bob Delaney:** Okay. Were you following the election and the degree to which that plant had become a local issue in Mississauga?

**Mr. Gregory Vogt:** When stories about our plant showed up in the media, certainly we were interested in that and we followed that, yes.

**Mr. Bob Delaney:** What was the time period when you were out of the country?

**Mr. Gregory Vogt:** September, early October—late September, so the second week in September, and early October.

**Mr. Bob Delaney:** All right. So at that time, you would have been well aware that all three parties had come out in opposition to the Greenfield South project continuing?

**Mr. Gregory Vogt:** Towards the end of that period, I do think all three parties did indicate that they had a common view, if I could put it that way.

**Mr. Bob Delaney:** What would have been your options if a government of whatever stripe had cancelled the plant—just cancelled it?

**Mr. Gregory Vogt:** I'm speculating here, but probably lawsuits. I mean, that's probably what happens.

**Mr. Bob Delaney:** And what were your options if a government of whatever stripe had said, "We need to talk about a relocation"?

**Mr. Gregory Vogt:** That was certainly something that we welcomed a lot more. I mean, we're trying to grow an Ontario company. I think we're one of, and maybe the



only, company that does what we do, which is use Ontario engineers to design, build, own and operate power facilities. We believe that we're on the right track to grow this province, and so we much preferred that relocation approach to a cancellation approach.

**Mr. Bob Delaney:** When you got back after your vacation, was it pretty obvious to you that no matter what happened, that plant wasn't going to go forward?

**Mr. Gregory Vogt:** There were certainly very, very dark clouds on the horizon, if I can put it that way. Where the ball finally bounces on some of these things, sometimes it's hard to predict. To say we were certain that we'd end up where we did end up, I'd say we did not know. We did not know where it was going.

**Mr. Bob Delaney:** Why did you keep building it?

**Mr. Gregory Vogt:** We have obligations. When we sign contracts with people, we honour them. We honour them as long as we are able to honour them, and if the other side of the party says the contract's still valid, then we continue to honour them. I don't know how else to proceed. It's not a willy-nilly world; you've got to do what you sign up to do.

0910

**Mr. Bob Delaney:** Despite the fact that a government of any political stripe wouldn't have continued with the project and there was no local need for the power—and presumably the Ontario Power Authority had conveyed this to you—you continued with the project.

**Mr. Gregory Vogt:** That is correct.

**Mr. Bob Delaney:** I'm having trouble following that from a business perspective. What was your business case for continuing to build a project for which there was very little doubt that it wouldn't proceed?

**Mr. Gregory Vogt:** Well, if a party would come to us and say, "Your contract is no longer valid," then we can react to that differently than if a party says, "The people of Ontario have spoken; how would you like to react?" We're not an elected company. We don't get elected by the population of Ontario—

**The Chair (Mr. Shafiq Qadri):** One minute.

**Mr. Gregory Vogt:** —so we have to react to the contractual realities of the day, and that's what we did. We didn't have much other choice.

**Mr. Bob Delaney:** Okay. So in the end, you didn't litigate because the province did negotiate on an alternative site.

**Mr. Gregory Vogt:** They did.

**Mr. Bob Delaney:** Okay. I think I'm going to stop there. I think we're out of time. I'm going to continue to explore this on my next round.

**The Chair (Mr. Shafiq Qadri):** To the PC side. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. Good morning, Mr. Vogt. I want to just start by asking you—I'm looking for a few names. Who from your side and who from the government's side did the negotiations? Who was dealing with whom?

**Mr. Gregory Vogt:** In what negotiations?

**Mr. Victor Fedeli:** After the announcement, after the OPA called you one day and said, "Tools down."

**Mr. Gregory Vogt:** Certainly, I was involved. Our legal team was involved.

**Mr. Victor Fedeli:** You know, we have so many thousands of emails, and we see names popping up every once in a while. Who from the legal team on your side? Which firm?

**Mr. Gregory Vogt:** We use a firm called McMillan.

**Mr. Victor Fedeli:** Sorry?

**Mr. Gregory Vogt:** McMillan.

**Mr. Victor Fedeli:** Okay. So, when I see McMillan's emails, which we have, I'll know that that involves you, then.

**Mr. Gregory Vogt:** Yes.

**Mr. Victor Fedeli:** Okay. And who else?

**Mr. Gregory Vogt:** Well, that was generally the way that it ran. I would then consult with other individuals in my firm or other people I would know in the industry if I wanted further information. But that was generally the way that things happened. The legal team really did a lot of the work.

**Mr. Victor Fedeli:** And who was on the other side?

**Mr. Gregory Vogt:** The OPA—

**Mr. Victor Fedeli:** Okay.

**Mr. Gregory Vogt:** —and then their legal team.

**Mr. Victor Fedeli:** And who was that?

**Mr. Gregory Vogt:** They, I believe, used Osler, but I'm not too sure if they exclusively used Osler. I believe they also consulted with others, as well as internal counsel. We don't have internal counsel.

**Mr. Victor Fedeli:** We have emails from Torys as well. Would you have seen—

**Mr. Gregory Vogt:** There were a number of different firms that were involved.

**Mr. Victor Fedeli:** Any individuals? Did you meet with any individuals? You, face to face, with any individuals from OPA or other law firms?

**Mr. Gregory Vogt:** Certainly, we met with people from the OPA.

**Mr. Victor Fedeli:** Who would you have met with?

**Mr. Gregory Vogt:** Colin Andersen, as well as other people out of their organization.

**Mr. Victor Fedeli:** How many times would you have met with Colin Andersen?

**Mr. Gregory Vogt:** A handful, maybe.

**Mr. Victor Fedeli:** Okay. That's fair.

I've handed you a package of documents that looks like this.

**Mr. Gregory Vogt:** Right.

**Mr. Victor Fedeli:** So on tab 1, on the first page, you're going to see a sentence that says, "Both Vogt and the OPA are playing hardball." This is from the Ministry of Energy. You may never have seen this email; we have.

This is internal in the Ministry of Energy, from energy to energy: "Both Vogt and the OPA are playing hardball. Seems to me that the bottom line is that Vogt has the leverage, unless the negotiator plays the legislation card." Why would you, probably seeing this for the first time,



think that the government would admit that you have the leverage? What leverage would you have held in this particular cancellation?

**Mr. Gregory Vogt:** I'm not too sure.

**Mr. Victor Fedeli:** Okay.

**Mr. Gregory Vogt:** I mean, our flagship project is being attacked in a fundamental way. Last time I checked, the laws of this province are created by the government of this province.

**Mr. Victor Fedeli:** The Auditor General has told us that they cut 10 side deals—he calls them “side deals”—with you. You must have had some very serious leverage over these people for 10 side deals to be cut. Would you think about anything further, why they would have succumbed to so many of these deals?

**Mr. Gregory Vogt:** I think a lot of the exercise here—because the elephant in the room really was our lender, and our lender was very no-nonsense about it and they're a major player, they hired the biggest legal guns they could get their hands on to do what they felt they needed to do. Because it's now a very complex situation with a number of players, we decided that our future lay in this province, our future lay in building a project, and our future lay in doing what we do best, which we believe is developing environmental technology and implementing it in this province.

**Mr. Victor Fedeli:** Who is Art Birchenough?

**Mr. Gregory Vogt:** I believe he was a consultant that, I'm not too sure who hired but it's the other side, the government or the OPA; I'm not too sure who exactly—

**Mr. Victor Fedeli:** On document 2, we have another—this is all energy people and justice people, in fact more justice people than energy people.

“I just heard from DM Lindsay that Art Birchenough is meeting with Greg Vogt this afternoon—this letter is no longer in play. Pens down on this one.”

Obviously, this is back on November 10, so this is around the time the announcement is made that you're to stop work. They were starting to craft letters. There are letters back and forth. There's a lot of correspondence here from Robert Prichard at Torys.

Had you ever dealt with Robert Prichard or any correspondence from Robert Prichard at the firm Torys to you?

**Mr. Gregory Vogt:** At this point, I had never met Mr. Prichard.

**Mr. Victor Fedeli:** Okay. Karen Howlett from the Globe and Mail is writing to him and saying, “Can I talk to you about your role in this? I gather from my sources that you were responsible for negotiating the settlement with EIG, the Washington-based hedge fund lenders to Greenfield, and that you were also the lead negotiator in talks with the Vogt brothers to transfer their project to Sarnia.”

Had you dealt with the firm Torys at all, or was it only Osler when you would sit across a table to negotiate? Or did you talk to your lawyer and they negotiated?

**Mr. Gregory Vogt:** I do believe there were some meetings where Torys was around the table and Mr.

Prichard was around the table, but that was later on in the process, not at this November 10 time.

**Mr. Victor Fedeli:** So there were times when you did meet with Mr. Prichard?

**Mr. Gregory Vogt:** Yes.

**Mr. Victor Fedeli:** Okay. In document 2, in a July 7 email, it appears the minister is ready to sign off on the final deal. Did you ever talk to a Craig MacLennan from energy?

**Mr. Gregory Vogt:** No.

**Mr. Victor Fedeli:** The deputy minister, Serge Imbrogno?

**Mr. Gregory Vogt:** Throughout this period?

**Mr. Victor Fedeli:** Between that period and today.

**Mr. Gregory Vogt:** “Ever” is a different a story because Mr. Imbrogno had a different role at OEFC and we had a contract with OEFC so there were times that we met with Mr. Imbrogno on another file. But—

**Mr. Victor Fedeli:** Okay. So the OEFC: Was he there at the time when the settlement was done?

**Mr. Gregory Vogt:** I can't speak to that either.

**Mr. Victor Fedeli:** Okay. We'll figure that out.

You've already told me you had a handful of meetings with Colin Andersen. Do you feel he was representing the government?

**Mr. Gregory Vogt:** I thought he represented the OPA. I mean that's what his business card said and that's what his title said. I took him at that, that he was the OPA.

**Mr. Victor Fedeli:** That's fair, most fair.

There are a lot of correspondent letters between, again, justice and OPA and cabinet and that type of thing. This would have all gone on behind the scenes while you met with Colin Andersen. He was the face-to-face guy for you.

**Mr. Gregory Vogt:** He was the most senior person on the OPA side, the other side of our contract. Yes, I guess he would be certainly the senior face that we dealt with.

**Mr. Victor Fedeli:** Do you remember any other names of people you dealt with day-to-day? I mean, this took some time. Does anybody of significance come to mind in your—

**Mr. Gregory Vogt:** I know Mr. Killeavy was involved as well, but Colin tended to be the one who would call me.

**Mr. Victor Fedeli:** Directly?

**Mr. Gregory Vogt:** He would call me and I would call him when we'd set up a meeting or whatnot to talk about this. It seemed to be fairly important to him and it certainly was very important to me.

**Mr. Victor Fedeli:** After the election, we have emails. You mentioned Mr. Killeavy. That's Michael Killeavy from the OPA?

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**Mr. Gregory Vogt:** That's correct.

**Mr. Victor Fedeli:** Go to document 4, tab 4. He's talking to Rocco Sebastiano and other lawyers and other people, and for some reason they think you're about to go under. He said, “I hope that Greg”—referring to you—



“et al have snorkels. They’re going to need them. This project is seriously underwater.” Did you feel at any time that you were going to go belly-up?

**Mr. Gregory Vogt:** No.

**Mr. Victor Fedeli:** We have other documents. I didn’t bring them today, because we’ve tabled them before. There was talk of forcing you to seek CCAA protection. Are you aware of that? Had you heard about that?

**Mr. Gregory Vogt:** Yes, yes.

**Mr. Victor Fedeli:** Why do you think the government wanted you to fail or didn’t let you fail? Take about 30 seconds and just tell me about that whole—

**Mr. Gregory Vogt:** Well, my understanding, in the fight between EIG and the OPA and us—if I could sort of line up the parties that way, because when that fight then progressed, the government agreed to indemnify us against our claims from our lenders.

**Mr. Victor Fedeli:** Yes.

**Mr. Gregory Vogt:** That’s the way the parties then lined up. I’m sorry, could you just repeat the question again?

**Mr. Victor Fedeli:** I was just asking you about the CCAA protection, bankruptcy protection.

**Mr. Gregory Vogt:** Okay. So in that process, one of the thoughts or one of the ideas that was tabled was that, with the difference between New York law and Ontario law and the issue around the legal rate of interest, what could be different strategies that could be used to achieve the best end? One of the strategies that was developed, that ultimately was not used, was a CCAA approach.

**Mr. Victor Fedeli:** A bankruptcy approach?

**Mr. Gregory Vogt:** You can call it that; a re-org approach.

**Mr. Victor Fedeli:** I want to talk about the deal that eventually was done, because I’ve got to be honest with you: You fell into a jar of honey here, at the end of the day. Somehow I cannot figure out—you had a deal with EIG for \$150 million. Am I right so far? A borrowing capacity or an agreement—

**Mr. Gregory Vogt:** No, no.

**Mr. Victor Fedeli:** But why did the government then repay the—

**Mr. Gregory Vogt:** It was \$260-odd million financing.

**Mr. Victor Fedeli:** We’ve been told that \$60 million was used to repay the funds to EIG and \$90 million was used to pay penalty fees. Those are rough numbers. It might have been \$88 million point something. Is the Auditor General accurate in those numbers?

**Mr. Gregory Vogt:** They sound correct to me. I don’t have any reason to dispute them.

**Mr. Victor Fedeli:** So if the loan was \$60 million, how could the penalty be \$90 million? Just the penalty; we don’t get any energy out of that. That’s a penalty.

**Mr. Gregory Vogt:** I tried to give you the example. Mr. Tabuns, earlier, had the same question—

**Mr. Victor Fedeli:** I heard that.

**Mr. Gregory Vogt:** When you’re early on in—so if a bank lends you—

**Mr. Victor Fedeli:** Okay. So it’s going to be the same answer. Let me just twist it up here for a second.

**Mr. Gregory Vogt:** Sure.

**Mr. Victor Fedeli:** We heard this from the auditor. The government agreed to the \$150 million, \$60 million and—they agreed to the \$150 million. Did they know that \$90 million of that was penalties? When they agreed to make EIG whole, did they know that \$90 million was in a penalty?

**Mr. Gregory Vogt:** I think they understood all of the numbers. I believe they were aware of all of the numbers and what they were for and how they were accounted for.

**Mr. Victor Fedeli:** You think they knew, when they agreed to pay EIG the \$150 million, that \$90 million of it was not for the loan repayment; it was for a penalty?

**Mr. Gregory Vogt:** Certainly I had no indication that they didn’t know that. I mean, I can’t speak for what they knew and they didn’t know, but—

**Mr. Victor Fedeli:** I’ve got to be honest with you. That’s pretty shocking—not on your behalf.

So they paid you, according to the auditor—I’ll use rougher numbers, without fractions—\$85 million for the building that’s currently in Mississauga. When the government told the public the total cost to cancel Mississauga was \$180 million, they told us \$85 million was for the building, \$88 million was to EIG in an early termination settlement, \$7 million for site-specific costs, \$2 million was some other miscellaneous kind of number—\$180 million. Does that sound about right?

**Mr. Gregory Vogt:** I’m not intimately familiar on how those numbers were arrived at. I mean, nothing that you say to me suggests to me that those are not right, but I don’t know if they’re right, because I don’t know what was in those numbers at the end of the day.

When somebody builds a house and borrows money to build the house and the builder needs to charge that interest because it’s part of his cost to the person buying the house, is that cost to the house or is it cost of the financing? It’s certainly in the purchase price. So it starts to get a little bit nebulous when you start parsing it apart carefully.

**Mr. Victor Fedeli:** Okay. That’s fair. So they told us the total price was \$180 million. Of course the auditor’s come out and said that’s wrong; the total price is \$275 million. Actually he said the total price is \$351 million minus some future payment savings that we may receive, which is \$275 million. But the Liberals came out and said it’s \$180 million. Shortly after, they corrected it and said it’s \$10 million. That’s the OEFC you were referring to. “The OEFC agreed to pay \$10 million, the absolute maximum amount it felt a court could have awarded, including interest” and forgave \$700,000 in court fees to Eastern Power. You’re familiar with that \$10-million payment?

**Mr. Gregory Vogt:** I’m familiar with that statement, yes.

**Mr. Victor Fedeli:** Did you receive the \$10-million payment?

**Mr. Gregory Vogt:** Yes, we did.



**Mr. Victor Fedeli:** Okay. The next part is one that I've had a bee in my bonnet over for a long time. It's this \$5.4-million side deal, and I'm going to call it here a "secret" side deal. It's been disclosed by the Auditor General, but I need to hear it from you. Basically what the auditor said, and what I have alleged right from day one, when we found one document that said there's a secret side deal here that's for \$5 million—nobody seems to know what it's for.

I'm going to read you what the auditor says and I'll ask you if you agree. He said that the side agreement—there's a "\$5.4-million difference needed to satisfy Eastern Power's demand"—it's a \$5.4-million contract—"so that negotiations on stopping construction at Mississauga could get started." It's for a new power contract at Keele Valley. It allows "Eastern Power to keep the money if Keele Valley was found not to be a viable site."

So they agreed to pay you \$5.4 million for a contract for power, but if the site's not viable, you keep the money. In fact, the auditor says, "Our review of documents found that the OPA had already questioned—before agreeing to the payment—whether it would be possible to extract methane gas from the site...." They knew it wasn't a viable site, yet they went ahead anyway. The auditor says, "No new power supply contracts for this site ever materialized, and therefore Eastern Power kept the \$5.4 million." Did you receive that additional \$5.4 million in that side deal?

**Mr. Gregory Vogt:** I can't comment on all of that analysis because I wasn't privy to where the Auditor General's coming on that. Our view was—

**Mr. Victor Fedeli:** Did you receive \$15.4 million from the OEFC?

**Mr. Gregory Vogt:** That's the comment I was going to make: We received the \$15 million that we felt was a fair settlement for our issues.

**Mr. Victor Fedeli:** So you'd been asking for \$15 million or \$15.4 million all along?

**Mr. Gregory Vogt:** Right.

**Mr. Victor Fedeli:** Am I correct in that? That's your number? You wanted \$15 million—

**Mr. Gregory Vogt:** Well, there was some negotiation back and forth, but that's the number that we finally agreed to.

**Mr. Victor Fedeli:** Okay. They came out and would not tell the public it was \$15 million. They told the public it was \$10 million. Do you have any idea why they would have told the public it was \$10 million?

**Mr. Gregory Vogt:** Again, I can't comment on any of that because that's—I don't know exactly what you're referring to.

**Mr. Victor Fedeli:** Did you receive it as a \$15.4-million payment or did you receive \$10 million and later \$5.4 million? Would you know how you received that?

**Mr. Gregory Vogt:** I would need to go back, but I do believe some monies came from OEFC and some came from the OPA—

**Mr. Victor Fedeli:** I think so, too, by the way. In order to cover up the fact that they paid you \$15.4 mil-

lion, they paid you \$10 million from the OEFC and disclosed it. Why they would go to such great pains to hide \$5.4 million I'll never know. They hid the fact that there was almost \$100 million outstanding. I have no idea why they would go to such great pains. We have found the documentation track on their purposeful cover-up of \$5.4 million. Do you have any idea why it was so important for them to hide that extra \$5-million payment? Any idea whatsoever?

**Mr. Gregory Vogt:** I don't know what you're referring to about hiding \$5.4 million, because certainly—

**Mr. Victor Fedeli:** Only the Auditor General told us. The government has never admitted to that payment until the Auditor General did, although I've asked for it in the Legislature time after time after time. So do you have any idea why this \$5.4 million was so important?

**Mr. Gregory Vogt:** I can't speak to any of that. I'm not privy to that.

**Mr. Victor Fedeli:** Is it that embarrassing, do you think, that they would give you a contract for \$5.4 million knowing that you could never do what the contract offered, but your out on it is that, if you can't do it, you get to keep the money? That's how they made you whole on that contract. Do you have any idea about their back-room dealings or their background dealings on this?

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**Mr. Gregory Vogt:** I can't comment on any of this.

**Mr. Victor Fedeli:** You just understood that you were getting \$15.4 million, and you got it in two different cheques.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Victor Fedeli:** I want to go to the other payment, if you will. It's the \$65 million you're going to receive over 20 years for the pipeline charges. They originally had this in Mississauga. Now it's in Lambton, and the gas is closer. Because the gas is closer, the auditor says, "We estimate that"—you—"Greenfield will save about \$65 million...."

"The OPA told us that it was aware of these savings during its negotiations" but "no amount of savings was able to be negotiated and reflected in the price...." The OPA could not negotiate you out of that \$65 million. Do you acknowledge that there is \$65 million in additional profits to be made for absolutely no additional work?

**Mr. Gregory Vogt:** No, I don't acknowledge that.

**Mr. Victor Fedeli:** You don't acknowledge that? Do you think the Auditor General is wrong in saying to the Legislature that you're going to make \$65 million over 20 years because the gas is closer, and they couldn't stop you from keeping that money?

**Mr. Gregory Vogt:** First of all, these are—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Fedeli. To you, now, Mr. Tabuns: 10 minutes.

**Mr. Peter Tabuns:** Thank you, Chair. Mr. Vogt, earlier I asked you about the risks that you ran in stopping construction—that the OPA was aware of the risks that you were facing—but our Auditor General said that the OPA had asked you for the lending agreement with EIG and you refused to give it to them before a



settlement was made between you and them. Why did you refuse to give them that information?

**Mr. Gregory Vogt:** Our view was that they needed to basically come to the table and say, "We're going to indemnify you, come hell or high water." We told them, "That's what you need to come to the table for, because otherwise, if you want us to be part—if you're going to protect us from the lender, then you have to be up at the table with that."

**Mr. Peter Tabuns:** But how could they make an informed decision without knowing what your obligations were to your lender?

**Mr. Gregory Vogt:** Well, there was enough information there for them to make, I thought, an informed decision. They knew how expensive these projects are. We gave them a rough idea of the magnitude involved in terms of the dollars. All of that stuff was correct, so they could make an informed decision.

Whether a dollar is interest or a dollar is penalty or this dollar has been spent yet or not—we thought that that was minutiae and would distract from getting to a settlement, so we chose the course that would get us to a settlement.

**Mr. Peter Tabuns:** They apparently found that your situation was far more dire than they expected. I don't know whether they would have made a different decision. My suspicion was that they had gone so far down this road—not the OPA; the government had gone so far down this road that it wasn't going to change course, but they made a decision without actually seeing what your lending agreement was, and you wouldn't provide that to them before they signed off. Correct?

**Mr. Gregory Vogt:** Well, you've made a lot of statements there.

**Mr. Peter Tabuns:** Sorry; I'll simplify. They signed off with you before they were able to see what your liabilities were to the financier.

**Mr. Gregory Vogt:** No, I wouldn't agree with that either. They certainly knew the quantum that we were talking about. They knew that this was a \$500-million to \$600-million project and that we were 30% in terms of the construction progress. There would be a couple hundred million dollars' worth of liability to the lender. That's what we told them the quantum was, so they had a rough idea where we were going.

It was surprising to them, I know, when they found out in terms of the interest rate, the penalty fees and how that was structured, because I would say that our transaction was different than other ones that they had seen.

**Mr. Peter Tabuns:** This line of credit with EIG was for how much?

**Mr. Gregory Vogt:** Some \$260-odd million.

**Mr. Peter Tabuns:** And you just said this project would cost somewhere in the \$500-million range?

**Mr. Gregory Vogt:** Well, when you take all of the revenues that such a project can generate, and all the costs that need to go into it, yes, you get numbers like that.

**Mr. Peter Tabuns:** Sorry. The cost of the construction of the project: How much was that?

**Mr. Gregory Vogt:** Well, there was this facility, which was \$260 million, but there was also a Credit Suisse facility which was for \$24 million. And then there were additional monies that we had put in, of course, so there was a lot of money in this project.

**Mr. Peter Tabuns:** So the total cost of getting this project launched would have been how much?

**Mr. Gregory Vogt:** I would push a number north of \$400 million.

**Mr. Peter Tabuns:** And you had enough money beyond Credit Suisse, beyond EIG, to cover the rest of that?

**Mr. Gregory Vogt:** To deal with the costs? Yes, we had a complete program to be able to complete construction.

**Mr. Peter Tabuns:** One of the things that was disturbing to the Auditor General and to us was the whole settlement of costs with your corporation.

The Auditor General reports: "Neither we nor the independent engineer hired to certify Greenfield's costs were able to get copies of payroll" or T4 information to support the costs that you had put forward as ones you had incurred in getting this plant together. Why did you not provide the OPA with that information?

**Mr. Gregory Vogt:** The process that we put in place to get costs verified was through the independent engineer, and it was an arduous process. Ultimately, I think that even the Auditor General acknowledges that that process was completed and that all the costs were certified. So there was a process that did come to completion. Unfortunately, it came to completion shortly after his report was written, but it did reach completion. It's a tough process to pull all the documents and all the pieces that you need to get together. I think you've seen that yourself on projects like this. There's a lot of stuff. That would be my explanation.

**Mr. Peter Tabuns:** If I've heard you correctly, after the Auditor General had completed his report, you provided further documentation to the OPA. Is that correct?

**Mr. Gregory Vogt:** The certification—I'm not too sure exactly in terms of what it's needed to be crossed and what it's needed to be dotted, but there was a process that continued and the certifications were completed.

**Mr. Peter Tabuns:** My understanding, though, from the Auditor General was that he couldn't get payroll and T4 information that would have verified what you were charging. He noted that you had a 2011 plant budget, one that you provided to your lenders, showing engineering and plant management costs in May at \$19 million. The OPA paid you \$28 million. That's a big gap.

**Mr. Gregory Vogt:** But that's comparing apples and oranges.

**Mr. Peter Tabuns:** Well, you're telling your lenders what it's going to cost you, and then you turn around to the party that you have a contract with and say, "We told our lenders \$19 million, but in fact you're going to have to pay us \$28 million to settle this."



**Mr. Gregory Vogt:** Well, one is an engineering budget and one is a project development budget, which includes engineering, so they're different. One is a superset of the other one. For instance, when you do engineering and you're doing a drawing for the way a foundation looks, that's one piece of work. When you're doing an environmental screening or you're having public consultation, that isn't engineering. One is a superset of the other one, so you've really got to compare apples and apples, as opposed to apples and oranges.

**Mr. Peter Tabuns:** Did you tell your lenders what that superset was?

**Mr. Gregory Vogt:** Oh, yes.

**Mr. Peter Tabuns:** And our Auditor General didn't figure out that these were two different numbers?

**Mr. Gregory Vogt:** All of these documents are very tricky. It takes a long time to understand them fully.

**Mr. Peter Tabuns:** Do you own the Mississauga site? Do you still own the one on Loreland?

**Mr. Gregory Vogt:** If you're asking whether Eastern Power or an affiliated company still owns the site, yes, it does.

**Mr. Peter Tabuns:** And has the government sought to gain title to this site? They paid you a large amount of money for it.

**Mr. Gregory Vogt:** Yes, they did, but in the negotiation there were a lot of things that we didn't get a lot of money for. I'll give you an example. One of the major costs that we've never received a dime for is our cost of capital. Everybody else gets cost of capital. The provincial government and the Auditor General say that there is a cost of capital—calculates it and says, "This is a cost of capital." We've never received one cent for cost of capital. We've put in tens of millions of dollars and were not paid one cent for cost of capital. These were things that were negotiated out that just didn't fall on the right side of the line. That's why when it's described that we're the ones that have the leverage—we were pushed awfully hard.

**Mr. Peter Tabuns:** Just going back to the Mississauga site, you were paid for the site and you retained the value of the site. What was the meaning of that payment? Why were you paid money for this site?

**Mr. Gregory Vogt:** Because those were costs that we had to put in there. Those were monies that had to go into the project. They were costs.

**Mr. Peter Tabuns:** So you were reimbursed for clearing the site and setting it up for construction etc.?

**Mr. Gregory Vogt:** That's correct.

**Mr. Peter Tabuns:** Have you selected a site in Lambton?

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**Mr. Gregory Vogt:** It's not finalized yet, but we believe we're basically there. The building permit is not yet issued, but we hope that that will happen shortly.

**Mr. Peter Tabuns:** How much did you pay for the land?

**Mr. Gregory Vogt:** That was somewhat over \$1 million.

**Mr. Peter Tabuns:** Somewhat over a million?

**Mr. Gregory Vogt:** A million dollars.

**Mr. Peter Tabuns:** Will you be meeting your construction deadlines?

**Mr. Gregory Vogt:** We certainly hope so.

**Mr. Peter Tabuns:** When was Greenfield South supposed to originally come online?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Gregory Vogt:** In the original contract signed in 2005?

**Mr. Peter Tabuns:** Yes.

**Mr. Gregory Vogt:** The dates changed, so that's no longer fresh in mind.

**Mr. Peter Tabuns:** How much were you anticipating in monthly payments for the Greenfield South plant?

**Mr. Gregory Vogt:** Again, these are calculations that have been superseded since then, so I don't know what the monthly amount was.

**Mr. Peter Tabuns:** When you renegotiated your contract in 2009 with the OPA for Greenfield South, you substantially increased the monthly payment. The OPA didn't have to do that. Why did they increase the monthly payment?

**Mr. Gregory Vogt:** I think in a nutshell, the power was needed at that location. We had a good, competitive project. We wanted to go forward; they wanted to go forward. So that's what we did.

**Mr. Peter Tabuns:** If they hadn't increased the amount of money they were paying you, the project wouldn't have gone forward?

**Mr. Gregory Vogt:** That's correct.

**Mr. Peter Tabuns:** You dropped the diesel component of the operation, or the backup diesel, at that point?

**Mr. Gregory Vogt:** That's correct.

**Mr. Peter Tabuns:** What difference—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side. Mr. Delaney.

**Mr. Bob Delaney:** I think I'll probably pick up a little bit of the narrative that my colleague has been pursuing. Mr. Vogt, you now have a project in a willing host community in Sarnia, right?

**Mr. Gregory Vogt:** Very much so.

**Mr. Bob Delaney:** This time, you're actually going to build a generating station, right? One hopes.

**Mr. Gregory Vogt:** Yes.

**Mr. Bob Delaney:** Could you just briefly walk me through some of the local reception to having the project moved from Mississauga to Sarnia, how you've gotten on with the local population, the local civic leaders and what public consultation you've done?

**Mr. Gregory Vogt:** Right off the bat, after the announcement was made, the mayor of St. Clair township, Mr. Steve Arnold, called me up and welcomed me to St. Clair township. We immediately set up a meeting shortly thereafter, and they rolled out the red carpet and basically told us that anything that they could do to help expedite this project they would do. We then had a series of open houses in the local community centre in Moore-



town, and we had a very positive reception there. There were basically no real objectors to the project. There were some people who wanted us to buy their land, as well, if that's the way I can describe it. We did buy one farmer's piece of property, and there were other farmers and other landowners who were very interested in being able to do a similar transaction.

We've been well received there from a public consultation point of view, so I would describe it as very positive. It's hard to imagine it being much more positive than it has been. The local staff and the people at the town have been very co-operative as well and have moved us forward so that we're close to completing the permitting process.

**Mr. Bob Delaney:** So it would be fair to say that in Sarnia, both the local civic leadership and the population, to use words that have meaning in this committee, are willing hosts?

**Mr. Gregory Vogt:** I think that's fair.

**Mr. Bob Delaney:** Okay. What have you learned about the siting of energy generation projects? You've said that it's your hope to be able to go forward with additional such projects in the future. Based on your experience in Mississauga and now in Sarnia, what things have you learned going forward, and thinking back, what would you have done differently in Mississauga?

**Mr. Gregory Vogt:** That's a little bit of navel-gazing I guess. Having permitted a site or chosen a site where you're zoned, the local planners are generally happy, you've got a mixed result in public consultation, I don't know whether we would do too much different there. It's hard to turn around and try to predict the future. If you can turn around and look 10 years down the road and see your obstacles, well, fine, then you can avoid them. But if you can't, that's the tricky part: knowing where the population or the political scene will move. We've certainly thought about that, but it's a tricky equation. I really leave that to you. This is something that sounds more like a political question than it does an engineering, science or business question.

**Mr. Bob Delaney:** Well, if any of us in this room knew the answer to that, our party would form government forever.

Speaking again about Sarnia, what are some of the economic benefits that the project will bring to the Sarnia area?

**Mr. Gregory Vogt:** Certainly, the employment is a big component. I know that the township and the area welcome the construction jobs, the ongoing operational jobs, the dollars we leave in the community with the supplies we buy and the taxes that we pay in the community, the strengthening of the infrastructure out there. All of those things are very strong contributors to the lifeblood of the community.

**Mr. Bob Delaney:** Have you estimated the construction jobs in Sarnia and the ongoing operating jobs, in terms of numbers?

**Mr. Gregory Vogt:** There are many hundreds. There may be as many as 400 or 500 construction jobs. The

operating jobs: We're estimating about 35 people, permanent positions out there. That's quite a significant number of people for a small township.

**Mr. Bob Delaney:** A big part of our committee's mandate is to review the siting of the province's energy infrastructure. In the past 10 years, Ontario has sited 17 gas plants without an issue—let's say correctly—but clearly got two of them wrong, and yours was one of them. You're in a unique position to speak to us from the perspective of an affected proponent. In the next questions, your feedback is core to some of the work that this committee is doing.

How could there have been a better consultation process, both with you as a proponent at the outset, going back to 2004, and then continuing with the city and with local residents right from the beginning?

**Mr. Gregory Vogt:** That's a very, very tough question. I recall that when the proposal calls were being developed, there were special bonus points granted for certain electrical areas which needed the power. I know that some of the communities east of the city of Toronto—I believe we're talking Pickering, Ajax; Durham region—complained that they weren't given any brownie points for any new developments, in other words, because they didn't need the power there. I guess with the Pickering nuclear station and Darlington being out there, they're very strong electrically and therefore wouldn't be favoured that way. I know they complained. There were stories in the paper about how they wanted to get a valuation bonus as well to increase the chances of them getting a facility. You actually had municipalities sort of in the GTA fighting over whether they were going to welcome this. I know that even the city of Mississauga wanted to do their own power generating station.

The world changes so much, in terms of a public perception point of view, in the span of a few years, in terms of what somebody welcomes and what somebody is against. I'd like to give you the crystal ball and show you the way in terms of finding solutions, leading the population to a more prosperous Ontario. I know the part that I can do or that our company can do, and that's on the engineering and construction and operations and technical innovation. That's what we do. But when you start talking about getting people on board and moving in a common direction, that sounds like leadership, and I leave the leadership up to you.

**Mr. Bob Delaney:** As a proponent, you may find yourself in a position where you would bid on energy infrastructure in a relatively more built-up area. What things at Eastern Power have you learned about how to better engage city councils and the local communities early on in the siting process so that you don't start building something and then have to stop?

**Mr. Gregory Vogt:** We've certainly learned that no matter how much consultation you do, it's never enough. We consider our consultation process with the township of St. Clair to be an ongoing process. We've had meetings with local citizens beyond what we were required to do. We found that to be helpful in terms of continuing the dialogue. We think that's a positive thing.



I would also suggest having communities actually participate in the projects themselves. I know there has been talk about doing that in terms of getting communities involved so that they're actual stakeholders and more than simply a consumer of the power.

All of those things, I think, are positive steps.

**0950**

**Mr. Bob Delaney:** In my last round, you spoke about a memo you had received from the city of Mississauga that I had asked you for. I believe your words were telling us that we were "good to go." Just to remind me again, the approximate date of that memo would have been—

**Mr. Gregory Vogt:** In 2004, 2005, somewhere in there.

**Mr. Bob Delaney:** Now that you've had some experience in it, where you've dealt with a city, and a very well-run city, what are the rights and responsibilities of cities in dealing with proponents such as yourself in building energy infrastructure?

**Mr. Gregory Vogt:** I certainly would encourage them to be consistent on their story. If they do have a zoning bylaw that they've passed and their citizens have supported, that they continue to support it and do not reverse themselves in short order. I don't think that does anybody any favours.

**Mr. Bob Delaney:** In other words, cities, when they've set aside land for power production, should be consistent in that and review their municipal plans.

**Mr. Gregory Vogt:** Correct.

**Mr. Bob Delaney:** Thanks, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To Mr. Fedeli: final 10 minutes.

**Mr. Victor Fedeli:** Thank you very much. I'll be sharing it with Mr. Leone.

I just need to catch up on the Mississauga site again. I know Mr. Tabuns was referring to that. What's happening with that site today?

**Mr. Gregory Vogt:** The equipment has been removed off the site. It's there. I don't know exactly what—

**Mr. Victor Fedeli:** You've got rusting girders there after two years in the rain. Is the building being dismantled at this moment?

**Mr. Gregory Vogt:** We have plans to eventually dismantle. Hopefully, we'll do that sooner rather than later, as well as hopefully—I know we've had some discussions with the city of Mississauga in terms of bringing it back to pre-development conditions, but there have been no final decisions made on that yet.

**Mr. Victor Fedeli:** And the Lambton site: You had mentioned that you are getting close to announcing a site that you purchased for \$1 million. The Auditor General said that you'll be producing power by 2017. Are you on schedule for that?

**Mr. Gregory Vogt:** We believe so.

**Mr. Victor Fedeli:** Okay. We've had different and competing documentation—that might be the word to say—on when you received some money, the payments in all of this. The Auditor General said the OPA had paid

out nearly \$250 million by July 11 in 2012. Is that around the time and is that around the amount?

**Mr. Gregory Vogt:** I can't speak to all the amounts that they've paid out, but with the EIG settlement and whatnot happening all around that time, I could imagine that being correct. But again, I'm not the expert to be able to—

**Mr. Victor Fedeli:** Okay, let's take it through just a little slower, then. Are you all paid out for everything that you think you have coming to you for the cancellation of the Mississauga gas plant at this moment, today? Are there any outstanding monies?

**Mr. Gregory Vogt:** I believe there are outstanding monies.

**Mr. Victor Fedeli:** What kind and for what?

**Mr. Gregory Vogt:** There are some suppliers that the OPA had agreed to pay, and some of those deliveries on some of the supply, or some minor trailing items, have still not been done yet. So there are still some outstanding issues. But I would describe them generally as minor. I think the vast majority has been done.

**Mr. Victor Fedeli:** A couple million?

**Mr. Gregory Vogt:** That's probably a correct guess.

**Mr. Victor Fedeli:** It's kind of what we've heard from suppliers as well, by the way, who call us to see if we can help them get paid. It's there, but it's not a big, big amount.

**Mr. Gregory Vogt:** Right.

**Mr. Victor Fedeli:** July 11, 2012—that seems to be some magical date; I don't know why—just about a year ago: Would you agree that the bulk of monies paid to you would have occurred by that time, or on or around that time, July 2012?

**Mr. Gregory Vogt:** Monies paid to us with respect to this file? I think that's a fair statement.

**Mr. Victor Fedeli:** The finance documents show us the government knew that it was around \$220 million back then. The Auditor General said it was \$250 million back then, so we're quibbling over only a few million. Would you agree again, then, that in and around \$200-plus million was paid out back in July 2012?

**Mr. Gregory Vogt:** I know some monies were just shortly thereafter as well. Don't hold me too tightly to that number, but I think the concept that around that time—

**Mr. Victor Fedeli:** A year after or a few months after or a few weeks after?

**Mr. Gregory Vogt:** Yes, I think in the next month or two probably is a correct statement. Again, I can't recall when the payments were made.

**Mr. Victor Fedeli:** Were you surprised, then, when you heard the government announce that the total cost was \$180 million, when we now, of course, know that more than \$200 million had been paid in July? The auditor tells us that the total is \$275 million. Would you have been surprised to read the minister stating that the total cost was \$180 million?

**Mr. Gregory Vogt:** No.

**Mr. Victor Fedeli:** Why not?

**Mr. Gregory Vogt:** The whole accounting exercise, when you look at savings and you look at additional ongoing costs going forward—to a certain extent, you're crystal-balling what the future will bring, so it gets to be a little bit tricky when you take a view on that.

**Mr. Victor Fedeli:** But that crystal-balling from the auditor is \$351 million. That's what it cost to cancel the Mississauga gas plant. He tells us \$351 million, minus \$20 million, minus \$56 million, for a total of \$275 million. He's not crystal-balling \$180 million. There's nowhere near \$180 million in any of these numbers. He has come up with \$291 million plus \$60 million for the extra fuel costs for delivering the power from Lambton versus Mississauga—\$351 million. He's not talking about \$180 million back then. If you'd already received \$220 million or \$250 million back in July, it doesn't come as any surprise that the number thrown out by the government is \$180 million when you'd already received, as you said, around that number around July? We're talking \$250 million. That's significantly more.

**Mr. Gregory Vogt:** I don't want to argue with you on this, but when you look at the Auditor General's report there's a lot of stuff in there, significant and large numbers, which are about ongoing costs to move power backward and forward across the province. Those are things that are going to happen in the future. If they don't come to bear, it does move the number down a lot.

**Mr. Victor Fedeli:** If they don't come to bear, it's \$351 million to cancel, not \$275 million. But you already said that all of the payments between EIG and everybody else, yourself included, are in the \$250-million range around July, maybe a few weeks here or there; maybe a few million still outstanding. Why would it not come as a surprise to you, then, when the minister says it's \$180 million and when you and the partners already received \$250 million?

**Mr. Gregory Vogt:** I'll go back to my earlier comment. When you look at the savings—

**Mr. Victor Fedeli:** No; this is cash that has already been paid. This isn't about future savings. These are cheques that have been written. We know—the Auditor General told us—that the cheques that have been written are \$250 million.

**Mr. Gregory Vogt:** I don't disagree with that, because I don't have knowledge that that's wrong, nor do I have knowledge that that's the absolute number, but—

**Mr. Victor Fedeli:** But it's in and around that number, you've said.

**Mr. Gregory Vogt:** I can't say that it looks completely wrong.

**Mr. Victor Fedeli:** But it's \$70 million more than \$180 million.

**Mr. Gregory Vogt:** And I don't disagree with that either, but when you do an analysis based on costs, not just cash—

**Mr. Victor Fedeli:** But we're not talking about the future costs. I understand that. We're not splitting hairs over the future costs. That's the Auditor General's pro-

jections; we'll leave that to him. Then we're talking \$351 million. Let's not talk about that.

**Mr. Gregory Vogt:** But correct me if I'm wrong. Are you asking about \$180 million in costs or \$180 million in actual monies? When people use the word "cost," it means something different to me than something meaning "monies." You're talking to me about monies being spent, but you're saying that the statement the government made was "costs," and those are different categories.

**Mr. Victor Fedeli:** Well, \$250 million is the cheques that were written.

**Mr. Gregory Vogt:** Again, cheques are not costs.

**Mr. Victor Fedeli:** I'm going to turn it over to my friend Mr. Leone.

**Mr. Rob Leone:** I'm not sure where to weigh in on that one.

**Mr. Victor Fedeli:** Cheques aren't costs.

**Mr. Rob Leone:** When did the construction of the Mississauga site start?

**Mr. Gregory Vogt:** When did it start?

**Mr. Rob Leone:** Yes.

**Mr. Gregory Vogt:** The building permit was issued in May 2011. Pre-construction, site utilities and things like that were done earlier than that.

**Mr. Rob Leone:** Okay. Any indication, after you put a shovel in the ground at that time in May 2011, that the project might not go through or might not move forward? You charged ahead after May when you had the building permit to build the site. At that time, you fully believed you were building a power plant in Mississauga.

**Mr. Gregory Vogt:** Certainly there was a high degree of confidence earlier than that, but the building permit was issued in May. We were doing pre-construction—in other words, investing significantly in pipes and roads and things like that—earlier than that.

**Mr. Rob Leone:** Could you estimate how much savings to the government would have occurred had the cancellation of the Mississauga plant happened before you actually started constructing the site?

1000

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Rob Leone:** Would you have saved money? Would the government have saved money had you not put a structure up?

**Mr. Gregory Vogt:** Under what circumstances? That the government would ask us to volunteer to stop building?

**Mr. Rob Leone:** You were building a structure that added to the cost of the cancellation of the project—or the relocation costs, at least. Correct? So if you didn't put the structure up, you would have saved money, would you not? Can one reasonably assume that the costs would have been less had this project been cancelled a lot sooner than it was?

**Mr. Gregory Vogt:** As we've already discussed, I don't disagree with the general concept that if you don't spend a dollar, you could save a dollar, but things like



cancellation costs on the financing and whatnot may have actually gotten worse.

**Mr. Rob Leone:** All right. In the sense of trying to stop the project after it was built, you used this mortgage analogy—I think I’m going to get the hammer here pretty soon. This mortgage analogy is, I think, a very interesting concept.

**The Chair (Mr. Shafiq Qaadri):** You are very correct, Mr. Leone. Thanks for your questions and thanks for your presence, Mr. Vogt. You are officially dismissed.

**Mr. Gregory Vogt:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** We have a number of motions before the committee. We’ll begin with Mr. Tabuns. I would encourage you to do this more frequently, Mr. Tabuns. The floor is yours for a deferred motion.

**Mr. Peter Tabuns:** Withdrawn for now.

**The Chair (Mr. Shafiq Qaadri):** We certainly accept that. I’m not even going to call for a vote there. Anything else, Mr. Tabuns, from your side?

**Mr. Peter Tabuns:** Yes, I move—

**Mr. Victor Fedeli:** Why are we not calling for a vote on this?

**The Clerk of the Committee (Ms. Tamara Pomanski):** There was a motion on August 27. It has just been deferred for a few weeks. Mr. Tabuns has withdrawn it.

**Mr. Victor Fedeli:** It has a lot of dust on it.

**Mr. Peter Tabuns:** It was a great motion in its day.

**The Chair (Mr. Shafiq Qaadri):** Yes, and it would save everyone time, Mr. Tabuns, if you’d cancel your motions earlier, but in any case, go ahead.

**Mr. Peter Tabuns:** So true. I move that the Standing Committee on Justice Policy not meet on Tuesday, October 8, 2013.

**The Chair (Mr. Shafiq Qaadri):** That’s an exceptionally welcome motion, Mr. Tabuns. Any discussion thereof? The motion is officially carried.

**The Clerk of the Committee (Ms. Tamara Pomanski):** No, you have to vote.

**Mr. Victor Fedeli:** We just did. You blinked.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Oh, sorry.

**The Chair (Mr. Shafiq Qaadri):** As advised by Clerk Pomanski, those in favour of said motion will please vote. Those opposed? Any abstentions or conscientious objections? None. The motion carries.

Mr. Tabuns, your motion.

**Mr. John Yakabuski:** I didn’t realize that there was an option here.

**Mr. Peter Tabuns:** Mr. Chair, I move that the Auditor General be called as a neutral witness at her earliest availability following Tuesday, October 8, 2013. Subject to the auditor’s availability, she shall be scheduled for two witness slots on either Tuesday or Thursday. If this falls on a Tuesday, she shall be scheduled from 8:30 a.m. to 10 a.m. and 3 p.m. to 4:30 p.m. If this falls on a Thursday, she shall be scheduled from 8:30 a.m. to 10 a.m. and 1 p.m. to 2:30 p.m.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Any discussion? All those in favour of said motion? A conscientious objection, Mr. Yakabuski?

**Mr. John Yakabuski:** No, it’s part of the discussion. You’re too quick. Given that we now have five-minute statements and an hour and 90 minutes of questions, it should be from 8:30 to 10:05.

**The Chair (Mr. Shafiq Qaadri):** We’ll work it in. I accept your math, Mr. Yakabuski. We’ll accommodate.

**Mr. John Yakabuski:** I thought we had a motion earlier to change the times on the committee. That’s fine.

**The Chair (Mr. Shafiq Qaadri):** All right; we get your point. In any case, all in favour of that motion? All opposed? The motion carries.

Mr. Delaney?

**Mr. Bob Delaney:** Thank you, Chair. I move that the Standing Committee on Justice Policy request from Eastern Power Ltd. the correspondence from the city of Mississauga in 2004-05 confirming that Eastern Power was cleared to build its project on the Greenfield South site.

**The Chair (Mr. Shafiq Qaadri):** Any discussion on this motion? All those in favour? All opposed? The motion carries.

In the never-ending saga of distribution by Clerk Pomanski of confidential documents, she has this to offer you.

**The Clerk of the Committee (Ms. Tamara Pomanski):** We’ve received documents from the OPA: batch 2. One member per caucus received confidential—please keep them confidential until we decide otherwise. There was non-confidential as well distributed to the rest of the members.

**Mr. Peter Tabuns:** And the non-confidential documents are now public.

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli?

**Mr. Victor Fedeli:** When is the next subcommittee meeting to go over these confidential documents?

**The Clerk of the Committee (Ms. Tamara Pomanski):** I was going to remind the subcommittee that we are still meeting next Tuesday at 4:45, and the OPA is attending.

**Mr. Victor Fedeli:** That’s the AG day. We’re going to have to go to that.

**The Clerk of the Committee (Ms. Tamara Pomanski):** When did you want to meet? I have Mr. Lyle confirmed, but I can—when would the subcommittee like to meet next?

**Mr. John Yakabuski:** Reschedule to a later date because—

**Mr. Victor Fedeli:** The report is at 3:00. This is going to come right in the middle of it all.

**The Clerk of the Committee (Ms. Tamara Pomanski):** Okay.

**The Chair (Mr. Shafiq Qaadri):** And please get the five minutes of Mr. Yakabuski’s correct next time as well.

**Mr. Victor Fedeli:** So how much later?

**Mr. Peter Tabuns:** We could make it for Thursday after the one—

**Mr. Victor Fedeli:** Thursday the 10th?

**Mr. Peter Tabuns:** Well, we could make it for Thursday at 10, sure.

**Mr. Victor Fedeli:** Thursday the 10th?

**Mr. Peter Tabuns:** Thursday at 10—oh, no; we're not going to do anything on the subcommittee next week.

**Mr. John Yakabuski:** We should just let him know that we will be recalling him at a later date.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Okay.

**The Chair (Mr. Shafiq Qaadri):** All right; thanks. Further business, colleagues? The committee is adjourned.

*The committee adjourned at 1005.*











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# Official Report of Debates (Hansard)

Thursday 10 October 2013

# Journal des débats (Hansard)

Jeudi 10 octobre 2013

## Standing Committee on Justice Policy

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 10 October 2013

Jeudi 10 octobre 2013

*The committee met at 0831 in room 151.*

## MEMBERS' PRIVILEGES

## OFFICE OF THE AUDITOR GENERAL

**Le Président (M. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. We welcome Bonnie Lysyk, not only to the committee, but also to Ontario as Ontario's Auditor General. She's accompanied by some of her colleagues.

Ms. Lysyk, I understand you will be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Ms. Bonnie Lysyk:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Lysyk. Just for identification purposes, you might let us know who your colleagues are, although I understand they will not be speaking on the record. I invite you to begin your five-minute opening address now.

**Ms. Bonnie Lysyk:** I'd like to introduce who I have with me. I have Gus Chagani, who is a director in the Office of the Auditor General; and Kim Cho, a manager in the Office of the Auditor General. Both are familiar with and have been involved in the Mississauga and Oakville power plant audits.

I just want to start by thanking members of the Standing Committee on Justice Policy for the opportunity to speak with you today. I would like to take you through the key findings of our special report on cancellation costs associated with the gas-fired generating plant in Oakville. Then I'd be happy to answer your questions.

In October 2009, the Ontario Power Authority contracted with TransCanada Energy to build a gas-fired electricity generating plant in Oakville. The following year, at the direction of the Premier's office, the Oakville plant was cancelled before construction had even begun. Eventually, plans were made to build a replacement plant in Napanee.

Our office estimates that the net cost to the public to cancel the Oakville plant and move it to Napanee will be about \$675 million, with \$635 million to be paid by electricity ratepayers and the remaining \$40 million by taxpayers. We arrived at that \$675 million by adding all costs and then subtracting estimated future savings.

In terms of costs, we have two broad categories: costs already incurred and estimated future costs.

In the first category, incurred costs, we have three items:

—\$210 million to cover TransCanada Energy's cost to purchase and modify gas turbines for the Oakville plant;

—\$40 million to cover TransCanada's sunk costs related to Oakville; and

—\$3 million in legal and professional fees.

In the second category, estimated future costs, we noted the following items:

—\$577 million in gas delivery and management services for the Napanee plant;

—\$91 million to buy replacement power, beginning in 2017;

—\$81 million to upgrade power transmission lines to bring the electricity back to the southwest GTA;

—\$43 million in gas and hydro connections for the Napanee plant;

—\$35 million for additional gas for the less efficient turbines in Napanee; and

—\$32 million in line losses for the distance power from Napanee has to travel.

All of these costs amount to \$1.112 billion.

From that, we subtracted \$275 million in savings as a result of the lower price negotiated for electricity from the Napanee plant and \$162 million in estimated savings because no payments for power will have to be made to TransCanada Energy until 2017.

That's how we arrived at \$675 million: by subtracting all estimated savings from all costs, estimated and real.

In addition, we believe it is possible that the \$675-million figure could also rise by up to \$140 million because of potential future increases in the cost of delivering natural gas to the Napanee plant.

A section of the pipeline route owned by TransCanada PipeLines Ltd. does not currently have the capacity to transport the amount of gas needed to service the Napanee plant. TransCanada PipeLines will need to invest in the pipeline to increase capacity, and then recover the cost of this investment through increased tolls—the rate it charges to move gas through the pipeline.

There is something you should keep in mind about these numbers. About two thirds of all cancellation costs and all of the savings will occur in the future, so our numbers are estimates—our best judgment of what these costs would look like in the next two decades.

Those are the detailed costs, and now I'd like to take you through the decisions that we believe had an impact on the cost to the public.

Soon after the Ontario Power Authority started the tendering process for a power plant in the southwest GTA, the town of Oakville publicly took measures to stop the project from being located there. Despite this, the OPA told prospective builders that it would not consider any municipal opposition in evaluating bids. In September 2009, with Oakville already having put a bylaw in place delaying the establishment of a power plant in the town, the Ontario Power Authority awarded the contract to TransCanada Energy.

At the time of the cancellation, we understand that the government committed to compensate TransCanada Energy for the full value of the Oakville contract—

**The Chair (Mr. Shafiq Qaadri):** Ms. Lysyk, that's the five-minute opening address. We do have your remarks on file here.

I would now invite the PCs to please begin questioning, opening with Ms. MacLeod.

**Ms. Lisa MacLeod:** Thank you very much, Chair. Welcome, Ms. Lysyk, to Ontario and to our committee.

**Ms. Bonnie Lysyk:** Thank you.

**Ms. Lisa MacLeod:** I want to congratulate you for the work that you've done. Given your new entry here and, of course, the big issue and the bombshell that this is, you've done, I think, a great job.

You said at your media availability a few days ago that the government would have known back in October 2010 what the costs would be—or, the earliest date they would have known that cancelling the Oakville gas plant would be well beyond the \$33 million to \$40 million that they had started to tell the Legislature. I'm just wondering: Can you confirm that here in committee, that they would have known it would have been beyond \$33 million to \$40 million?

**Ms. Bonnie Lysyk:** I have to think for a second about your question. I guess we knew that when the estimates were being done for the final negotiation, at that point in time, there would have been an understanding around some of the components of cost. As far back as December 2010, there would have been an understanding in terms of what some of the sunk costs were for the plant, as well as the turbine costs.

**Ms. Lisa MacLeod:** We have a cabinet document—this committee has, members of the assembly have, and you reference that cabinet document, I believe, on page 16 of your report. It was signed by Kathleen Wynne, who's now our Premier, on July 29, 2011. What it effectively did was, it authorized the Ministry of Energy to enter into an arbitration process with TransCanada and other parties on the issue of cancelling the Oakville power plant.

Is it possible, given what you just answered—that as far back as October or December 2010, the sunk costs and other costs associated with the turbine would have started to develop—that the Premier would have known at that time that the number would have been beyond the

\$33 million or \$40 million that had been suggested in this House?

**0840**

**Ms. Bonnie Lysyk:** The final settlement agreement was December 2012. At the point that you're talking about, which is December 2010, around the time they were drafting a memorandum of understanding for Kitchener-Waterloo—I guess I'd like to say that I think that is specifically a question for the Ontario Power Authority, because the Ontario Power Authority were involved in the negotiations. They were familiar with what was happening on the arbitration. Also, I believe Mr. Livingston was involved in the arbitration discussions. So at that point in time, it would be dependent on the information they communicated back.

In terms of being able to answer your question directly, I would be speculating as to exactly the numbers that people were aware of at that point in time.

**Ms. Lisa MacLeod:** But it was clear that as far back as 2010, they would have known that the costs would evolve well past \$33 million.

**Ms. Bonnie Lysyk:** I would say that depending on the communications from OPA back to the ministry and into the Premier's office—again, I don't want to speculate what people knew or didn't know.

**Ms. Lisa MacLeod:** Sure, but it is conceivable that the Premier would have known that cancelling the Oakville gas plant was well beyond the \$33-million to \$40-million mark when she gave her testimony back in April of 2013.

**Ms. Bonnie Lysyk:** Again, in April 2013—I'm speculating. I prefer not to speculate. I can speak to exactly what we have in the report, but in terms of what individuals knew and didn't know—

**Ms. Lisa MacLeod:** Right, but it is conceivable that the OPA knew. It would have been conceivable, given that this was a political decision, that Premier McGuinty's office and Premier Wynne's office would have been told it had evolved, since you yourself have just suggested that as far back as October and December 2010, there would have been known amounts or, I guess, estimates that, given the turbine situation and the sunk costs situation, it would have been far beyond the \$40 million.

**Ms. Bonnie Lysyk:** Again, I think these are questions for the people who were actually involved in the transactions, because they would know who they spoke with and who they didn't speak with. We've looked at the costs, we've looked at the process, but as to what people knew, my comfort level is you asking the people directly versus me hypothesizing on it.

**Ms. Lisa MacLeod:** So you would suggest, though, that the OPA would have known.

**Ms. Bonnie Lysyk:** The OPA would have known that there were additional costs, yes.

**Ms. Lisa MacLeod:** And they are an agency of the government.

**Ms. Bonnie Lysyk:** Yes.

**Ms. Lisa MacLeod:** And they were created by this government.



**Ms. Bonnie Lysyk:** The OPA, because they were going into negotiations, would have had estimates and costs.

**Ms. Lisa MacLeod:** Okay. In your report, you suggest the cost for cancelling the Oakville plant would have been lower if the government chose to wait. I think that's very significant to the population of Ontario. Can you elaborate on that?

**Ms. Bonnie Lysyk:** Yes. Under the contract, there is the force majeure provision and discriminatory action provisions, and also there was a responsibility for TransCanada Energy to obtain the appropriate permits and municipal approvals prior to TransCanada Energy being able to start construction. So they had to get approvals from Oakville.

At the time, as of June 2010, they weren't able to get those approvals. So within the time frame before there was a public announcement of the cancellation of the plant, they filed two forces majeures indicating that they themselves recognized that they might be having problems meeting the construction date and the in-service date.

Given all that, if that problem continued with Oakville and caused construction to be delayed 24 months after the original in-service date, at that point, the parties under the existing agreement could have walked away with lesser costs being paid to TransCanada Energy than under this arrangement.

**Ms. Lisa MacLeod:** So in theory, any government of any political stripe could have cancelled the Oakville gas plant project for little to no cost to the taxpayer if proper digression were exercised and proper due diligence was undertaken?

**Ms. Bonnie Lysyk:** I think what we're saying is that if they waited it out until it was obvious that TransCanada Energy wouldn't be able to have the plant constructed before 24 months after the original in-service date, there would be lesser costs.

**Ms. Lisa MacLeod:** In your professional opinion as auditor here in Ontario, did it make any financial sense to cancel the gas plant in 2010?

**Ms. Bonnie Lysyk:** Again, I'm not going to second-guess what people's decisions were at that point in time. All I would say is that when we looked at this situation and we got some familiarity with the contract, that it looked to us that it was reasonable to assume that if you had waited it out, you would be walking away having paid less than what this arrangement cost.

**Ms. Lisa MacLeod:** I just have one final question before my colleague Mr. Fedeli takes over the questioning.

Given the costs that we know now, particularly with respect to relocating to Napanee, had any other location in the GTA or another place in southwestern Ontario been chosen, is it conceivable that the costs would have been mitigated?

**Ms. Bonnie Lysyk:** I guess each project has its own costs, but if, for instance, for Napanee—by locating this plant in Napanee and requiring the power in the southwest GTA, you have to have in place more transmission

capability and the gas has to be moved from Sarnia to the plant, and then the electricity back to the southwest GTA. So there are more costs associated with the transmission of the power back into the southwest GTA, and there are more gas delivery costs. There are more costs, as a result of the location of the plant that's providing the electricity back to the southwest GTA.

**Ms. Lisa MacLeod:** Okay, thanks.

**Mr. Victor Fedeli:** Thank you very much, and welcome, and welcome to Ontario as well.

**Ms. Bonnie Lysyk:** Thank you.

**Mr. Victor Fedeli:** I want to follow up on two points that my colleague Ms. MacLeod had made. The first was about who knew what when? Now I understand you can't speculate back in December 2010, but on page 11, there is a point made that—this is in the response down at the bottom:

“Nevertheless, when the relocation deal was announced, the memorandum of understanding (MOU)” —that would have been the document that was signed in September 2012—“with TCE was clear that there would be costs in addition to the \$40 million in sunk costs incurred for the Oakville plant.”

Would you acknowledge, then, that at the signing of that MOU, back in September 2012—Colin Andersen, when I asked him the question, “Who knew?” he said everyone knew. Would you acknowledge or agree, then, that the government would have known back in September 2012, at the signing of this MOU, that were indeed additional costs above and beyond the \$40 million?

**Ms. Bonnie Lysyk:** Again, this is the Ontario Power Authority's response that you're quoting from. This was drafted for us by Colin Andersen, and that is Colin Andersen's response.

I would say, based on his response, he's indicating that, and that goes back to my original premise that in something as concerning as this, I think it's better to ask the original people what they knew at the time.

**Mr. Victor Fedeli:** Okay. On page 15, we talk about the Premier's office making TransCanada whole. How is it, in your opinion, that you are able to devote a certain amount of space to this that, and I'll read from it, OPA “had not been consulted when the Premier's office made its commitment to keep TCE whole. The OPA first confirmed with the Premier's office this commitment had in fact been made.” Following that, they made a letter. “The OPA,” it says, informed you that had it “been consulted, it would have advised the Premier's office against making the keeping-whole commitment to TCE....”

How is it then that you knew this, and we have been sitting in this committee, in these chairs, for one year, asking the same question to dozens upon dozens of witnesses, who have sworn an oath to tell the truth, and told us this never occurred?

**Ms. Bonnie Lysyk:** Well, we have a copy of the letter. I think that it's now in the public domain. So I'm not speaking out of turn there. It was information that was passed over to the office.

Now, on the other side, this audit had started before the justice hearings and, in terms of obtaining informa-

tion during the course of an audit, the team asked for listings of information that were held by the Ministry of Energy, as well as the OPA, and, from that listing of information chose what we wanted to see. Therefore, this information was provided based on our requests. I think we had access to information before the committee.

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**Mr. Victor Fedeli:** So you're confident, then, that the Premier's office did indeed make the commitment to keep TransCanada whole?

**Ms. Bonnie Lysyk:** Again, we're confident—well, again, based on information that's already public record.

**Mr. Victor Fedeli:** Okay. My only other thought on that, before I get back to Ms. MacLeod's points: How is it that you were able to come up with a total number? Again, we've been here for a year asking for numbers and being sent in circles, chasing our tails, to be quite frank. How is it that you were able to come up with a number and we couldn't, over the course of the year? We speculated on the number. Our number that we came up with was remarkably close to yours, incidentally, about \$15 million—a rounding fraction away, but how is it that we could not get that and you could? Are they more afraid of you than us?

**Ms. Bonnie Lysyk:** I guess the team just had a responsibility to determine the costs and worked with the staff at the OPA. They had prepared some information, so some of this is coming from the information they prepared, and then there were discussions that led to some of the finalization of this. So it was really just working with the OPA staff.

**Mr. Victor Fedeli:** Ms. MacLeod talked about the fact that you've pointed out that going to Napanee is what made this all more expensive, so when we continue to hear the government say, "Everybody was going to do this"—the fact that they went to Napanee is what really added the money. Am I correct in that? Is that a safe sentence?

**Ms. Bonnie Lysyk:** I think the majority of the difference in the cost between the Oakville plant and the Napanee plant relates to the fact that there's distance from the southwest GTA.

**Mr. Victor Fedeli:** So it's not really the cancellation; it was the poor choice of relocation that added the hundreds of millions? Is that safe to say?

**Ms. Bonnie Lysyk:** The settlement linked to the new contract, and that resulted in the additional costs, so yes.

**Mr. Victor Fedeli:** We've got five minutes for the rapid round here. I'm going to ask five questions, and they basically have to do with your opening statement, where you say, "In the second category, estimated future costs ... \$577 million in gas delivery and management services for the Napanee plant."

I'm going to ask the same question five times. How much of that \$577 million is because it's in Napanee and how much would have had to have been spent, should it have stayed in the Oakville area in a willing host community within a reasonable distance?

I'm going to ask that for the next five points, actually—bar the \$91 million. So the \$577 million in gas delivery: How much of that is because it's in Napanee? If you can't answer, I can appreciate that.

**Ms. Bonnie Lysyk:** Okay. So in terms of the gas—just a sec. I'm just going to look at—

**Mr. Victor Fedeli:** And you know I'm going to ask that about the \$81 million, the \$43 million, the \$35 million and the \$32 million, not the next point. Those are my five questions coming up.

**Ms. Bonnie Lysyk:** Yes, I hear you.

**Mr. Victor Fedeli:** Okay.

**Ms. Bonnie Lysyk:** Some of the costs in these costs are attributable to the in-service dates of the plants.

**Mr. Victor Fedeli:** I understand.

**Ms. Bonnie Lysyk:** For instance, on the—

**Mr. Victor Fedeli:** So the \$577 million is \$500 million because it's in Napanee—all of it?

**Ms. Bonnie Lysyk:** On the \$577 million, we're dealing with the split of—\$225 million is associated with Oakville.

**Mr. Victor Fedeli:** So \$225 million would have been spent if it stayed in Oakville?

**Ms. Bonnie Lysyk:** Yes.

**Mr. Victor Fedeli:** So \$577 million minus \$225 million?

**Ms. Bonnie Lysyk:** That's correct.

**Mr. Victor Fedeli:** And that number that I come up with—

**Ms. Bonnie Lysyk:** Is the Napanee—

**Mr. Victor Fedeli:** —is \$332 million extra because it went to Napanee. Am I correct in that?

**Ms. Bonnie Lysyk:** Correct.

**Mr. Victor Fedeli:** All right. Two lines down: "\$81 million to upgrade power transmission lines to bring the electricity back to the southwest GTA." How much of that?

**Ms. Bonnie Lysyk:** Well, the full amount, because—

**Mr. Victor Fedeli:** The full amount?

**Ms. Bonnie Lysyk:** Yes.

**Mr. Victor Fedeli:** And "\$43 million in gas and hydro connections for the Napanee plant": How much of that is because of the decision to go to Napanee?

**Ms. Bonnie Lysyk:** Oakville was \$10 million.

**Mr. Victor Fedeli:** Oakville was \$10 million. So we've got \$33 million there; "\$35 million for additional gas for the less efficient turbines in Napanee."

**Ms. Bonnie Lysyk:** None of that would have been incurred if it had stayed in Oakville.

**Mr. Victor Fedeli:** So that's \$35 million more because it went to Napanee?

**Ms. Bonnie Lysyk:** Correct.

**Mr. Victor Fedeli:** And "\$32 million in line losses for the distance power from Napanee has to travel." So I can presume—

**Ms. Bonnie Lysyk:** Likely the majority, yes.

**Mr. Victor Fedeli:** Yes, that's \$32 million. So how's your math? That's \$332 million plus \$81 million—they promised me there'd be no math here this morning, but



it's \$332 million plus \$81 million plus \$33 million plus \$35 million plus \$32 million—you're the auditor. I'm going to go with your number.

**Ms. Bonnie Lysyk:** It's \$513 million.

**Mr. Victor Fedeli:** So \$513 million extra because it went, the choice was made, to Napanee as opposed to if it stayed in a willing host community in the area where the power was needed.

I want you to go to page 17 of your submission. It's the second paragraph down, about halfway through. It's unfair: Mine is highlighted, and I can find it easily. It's page 17, the first paragraph; it starts "On September 24," about halfway down that one.

"The OPA informed us that the Minister of Energy told the OPA to locate the new plant in Napanee. The OPA did not think that Napanee was the optimal location because it would result in higher costs...."

Obviously, the higher costs were \$513 million. Do you have any idea why the Minister of Energy would tell the OPA to locate in Napanee when they knew it was going to cost so many hundreds of millions more? Any thought on that?

**Ms. Bonnie Lysyk:** They were already negotiating the KWC, Kitchener-Waterloo. They had two counter-offers.

**Mr. Victor Fedeli:** Somewhere nearby, that is—

**Ms. Bonnie Lysyk:** Yes.

**Mr. Victor Fedeli:** —a willing host community?

**Ms. Bonnie Lysyk:** They fell through. At that point, this was the plant that was designated by the minister for them to sign an agreement with. As to why, I can't answer why they made the choice they made.

**Mr. Victor Fedeli:** So you would confirm that because they chose the plant so far away, it's not the cancellation, it's the relocation cost—your original estimate here is an additional \$513 million because of the choice they made?

**Ms. Bonnie Lysyk:** Correct. Plus, I think, in that you would include the tolls, the additional tolls that could potentially be charged in the future.

**Mr. Victor Fedeli:** We'll talk about that \$140 million later. Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** To the NDP side: Mr. Tabuns.

**Mr. Peter Tabuns:** Good morning, Ms. Lysyk.

**Ms. Bonnie Lysyk:** Good morning.

**Mr. Peter Tabuns:** What a way to start a new job, eh?

**Ms. Bonnie Lysyk:** Yes.

**Mr. Peter Tabuns:** A quiet little file that you can get your teeth into.

I just want to follow up on a question that was asked by Mr. Fedeli, and you may comment. If the government of Ontario had waited instead of acting precipitously, we could have paid much less for cancellation of this plant; it may never have been built?

**Ms. Bonnie Lysyk:** We believe so.

**Mr. Peter Tabuns:** Did you quantify how low the figure could be if we had taken a slow route and let it just simply wither because it didn't meet the dates?

**Ms. Bonnie Lysyk:** We didn't quantify a number of what that would be. I think we felt that the discriminatory action section, which is the section that deals with the profits, would have perhaps been a section referred to, to avoid having to make TCE whole, so that would have been one. The sunk costs and the costs that they incurred as a result of being engaged in the transaction would logically have been the costs that would have been recouped maybe.

**Mr. Peter Tabuns:** If the city of Oakville had kept this matter before the courts, and they had missed their dates entirely, it's reasonable to say that Ontario would have spent nothing?

**Ms. Bonnie Lysyk:** Well, again, we believe that under that agreement, the profit side would not have had to have been paid.

**Mr. Peter Tabuns:** But the risk was entirely with the company. If they weren't able to meet their dates, their contract effectively lapsed, and it would have been no expense to us?

**Ms. Bonnie Lysyk:** Yes. Our thought, when we looked at that, is that TransCanada Energy really hadn't met their condition of the contract up to that point, and because the contract was meant to protect both parties, going into discussions, they were in a weaker position for negotiation purposes.

**Mr. Peter Tabuns:** If they had not been able to get started before the contract lapsed, would Ontario have been responsible for anything?

**Ms. Bonnie Lysyk:** Not to the extent that we have quantified, in our opinion.

**Mr. Peter Tabuns:** Are Ontarians getting a good financial deal out of the cancellation of the Oakville plant and its relocation to Napanee?

**Ms. Bonnie Lysyk:** Based on the information that we see in figure 2, we think that the costs associated with the Napanee plant are in excess of what the costs would have been if the Oakville plant had been built. At the end of the day, there's money that is being paid as a result of the cancellation leading to a new plant. There is an estimated \$675 million as a result of the decisions that were made.

0900

**Mr. Peter Tabuns:** So \$675 million in excess money or wasted money that ratepayers and taxpayers are covering.

**Ms. Bonnie Lysyk:** Money that will have to be paid as a result of the decision around the cancellation.

**Mr. Peter Tabuns:** For which we get no benefit.

**Ms. Bonnie Lysyk:** That would be—or at least costs that are beyond what we think needed to have been paid, had the Oakville plant gone ahead.

**Mr. Peter Tabuns:** Unnecessary expense.

**Ms. Bonnie Lysyk:** It would be, considering that, yes, unnecessary expense.

**Mr. Peter Tabuns:** Was this preventable?

**Ms. Bonnie Lysyk:** Again, you have to live in other people's shoes to know what was going through heads during the decision-making. But when we look at the situation and you see that there is a contract to benefit

both parties, at the end of the day, it didn't work, I think, like it was intended to when OPA signed the agreement.

**Mr. Peter Tabuns:** If the Premier's office had not stepped in and blocked the OPA from using contract provisions to protect the interests of the public, if the Premier's office had not stepped in and said, "Arbitration agreements are going to be required to drop all defences that you have," if the minister hadn't stepped in and dictated where the plant would be relocated, would we have had significantly lower costs?

**Ms. Bonnie Lysyk:** I think it goes back to the different points. OPA gave the ability to the government not to sign the deal at the very beginning when there was opposition from Oakville, so that was one.

**Mr. Peter Tabuns:** So that was the first out.

**Ms. Bonnie Lysyk:** The promise of making something whole, making TransCanada Energy whole and making that commitment, but actually putting it in writing I think is the next part that put the OPA in a weaker negotiating position. Then when the arbitration framework was put into place, it was all in favour of TransCanada Energy; there was really nothing in the arbitration framework that gave OPA any strength in negotiating.

**Mr. Peter Tabuns:** Then finally, the Minister of Energy determined where the new plant would go.

**Ms. Bonnie Lysyk:** Then in terms of where they thought a plant should be located based on their planning information, the choice was made for them.

**Mr. Peter Tabuns:** Without using numbers, could you describe this process in plain language?

**Ms. Bonnie Lysyk:** Okay. First of all, a request for proposals goes out, and there's an understanding now that there's a community that is taking issue with that proposal. Yet you go ahead and you issue an addendum that says, "We're not going to consider the fact that there's community non-support for this project," so the proposals are assessed, even knowing that there isn't support for the proposal, not taking it into account. That's one thing.

The second is, it's signed when there is strong opposition, so you have an agreement that is signed that you already know you're going to be fighting on, but you transfer that risk over to TransCanada Energy under a contract that protects you and TransCanada with respect to the force majeure sections. You cancel a contract and then, in my view, void it by putting in writing the fact that TransCanada Energy is entitled to recoup their profits. Then you set the stage for the arbitration framework, where you put in play a negotiating framework that doesn't give OPA much strength. At the end of the day, I think things transpire to the point where you have to make a deal because you don't want legal action to be taken because that's more public, and you end up with an arrangement that costs ratepayers more money than possibly it needed to.

**Mr. Peter Tabuns:** Okay. Mr. Bisson?

**Mr. Gilles Bisson:** No, go ahead.

**Mr. Peter Tabuns:** Was it a foregone conclusion when TransCanada was told the plant wouldn't go ahead? Was it a foregone conclusion that we'd be stuck with a bill for \$815 million?

**Ms. Bonnie Lysyk:** Well, from what we've got in the report here, we know that there were meetings between TransCanada Energy and the Premier's office, and that there was a commitment at that time to make them whole. "Make them whole" means that they would still stand to benefit from the contract, so one would assume, based on that—and again, I'm assuming—that there would be an appreciation and that that involves costs.

**Mr. Peter Tabuns:** The Premier has said that this never should have happened. But, in fact, it couldn't have played out the way it did and we wouldn't have incurred such large expenses, if the Premier's office hadn't been involved directing the way this matter was handled. Is that correct?

**Ms. Bonnie Lysyk:** Again, what I can comment on is what we have in the report. Why people made decisions and who actually made the final decisions, that's for, I think, this committee to conclude on.

**Mr. Peter Tabuns:** I'll try and put it a different way. The Ontario Power Authority have been told, "We don't want to go forward with this. You handle it," without being given further direction. Given the directions they were given, would they have been able to make better choices to give us a better deal?

**Ms. Bonnie Lysyk:** I think that's a question for Ontario Power Authority, but I can comment that if a promise wasn't put in writing, there might have been a potential to rely on sections of the contract to negotiate a deal, because TransCanada Energy, obviously, had met their part of the deal by being able to get the permits and the necessary municipal approvals they needed for them to begin construction.

**Mr. Gilles Bisson:** I just have a couple of very quick questions: Back when estimates was asking for the documents from the government, the government kept on saying, "We can't do that because it's going to muck up our negotiations." But from what I'm hearing from you, in fact, the government already mucked up their own negotiations by doing what they did, which led to higher costs.

Is it fair to say that the government, even though they were saying they couldn't release the documents because it was going to affect negotiations, in fact, had already done so by giving OPA the direction to make TCE whole? Would that be fair?

**Ms. Bonnie Lysyk:** I would say that, by issuing a letter on October 7 to TransCanada Energy, that that letter had a section in it that basically indicated to TransCanada Energy that they would be receiving a deal versus no deal.

**Mr. Gilles Bisson:** So that was the primary thing that led to the higher costs and settlement?

**Ms. Bonnie Lysyk:** That was the first part, yes.

**Mr. Gilles Bisson:** Do you know, in your investigation, were there any documents that you got in regard to the involvement of cabinet in all of this?



**Ms. Bonnie Lysyk:** No. I'll mention how we did the search for our documents. There was no search of the Office of the Premier, no search of the minister. The information we obtained was from the Ministry of Energy and the Ontario Power Authority.

**Mr. Gilles Bisson:** Was it, in your view, from what you see, solely the decision of the Premier or was it a decision of cabinet?

**Ms. Bonnie Lysyk:** Again, I can't comment on that.

**Mr. Peter Tabuns:** I'm going to go back to the question of the expenses that could have been avoided if we'd gone slowly.

If, in fact, TransCanada had not been able to meet their delivery dates and the contract had been dissolved, would we have been responsible for sunk costs?

**Ms. Bonnie Lysyk:** I guess I'd say it would have to have played itself out. I would think that, just, generally, based on my past business experience, one would believe you would have to cover sunk costs.

**Mr. Peter Tabuns:** And we wouldn't have had to pay for any profits?

**Ms. Bonnie Lysyk:** That would be correct.

**Mr. Peter Tabuns:** And we wouldn't have had to pay for a relocation?

**Ms. Bonnie Lysyk:** Well, it would be a decision as to whether you wanted to do another plant deal.

**Mr. Peter Tabuns:** In the government's 2010 long-term energy plan, they said this plant was no longer necessary in the system as a whole. They said that we had needed three plants, that we only need one now, and this isn't one of them.

**Ms. Bonnie Lysyk:** I think in discussions with the OPA, we understand that there is a recognition that they didn't need the power. They came to the realization that they didn't need the power for the Oakville plant until 2017. If the plant had been built, as was intended, there would have been NRR payments, net revenue requirement payments, made for electricity that wasn't needed.

**Mr. Peter Tabuns:** How long would it have taken the province to get to the lowest-cost option point?

0910

**Ms. Bonnie Lysyk:** How long would it—can you rephrase that?

**Mr. Peter Tabuns:** If we had been waiting it out, how long would we have had to wait? How long would this issue have been in the public eye?

**Ms. Bonnie Lysyk:** It would have been 24 months after—well, as soon as it was known they weren't able to build the plant within 24 months after the original in-service date, which was in 2014, so by some point in 2016 the plant would have been up and running. That would have been the time the discussions could have taken place around the fact that they wouldn't be meeting the 24-month—

**Mr. Peter Tabuns:** So this would have been in the headlines and in public consciousness right through the 2011 election and, frankly, for 2016? It might have gone through two election cycles; is that fair?

**Ms. Bonnie Lysyk:** Based on the contract, there was a 24-month requirement after in-service date before—

**Mr. Peter Tabuns:** So on a four-year term through two elections.

**Ms. Bonnie Lysyk:** Yes. Again, I'm not familiar—I have to say, being new to Ontario, the election dates are not—the past one is not in my mind right now, and the future one I haven't thought much about.

**Mr. Peter Tabuns:** Do you know, I understand that. For us, it's a whole different world.

**Ms. Bonnie Lysyk:** Yes.

**Mr. Peter Tabuns:** A lot of people are saying that the government took this high-cost option because the Liberal campaign team that was co-chaired by Kathleen Wynne, our Premier, wanted this dealt with before the 2011 election. Can you think of any reason other than political expediency to take this fast but expensive route as opposed to taking a slower, lower-cost route?

**Ms. Bonnie Lysyk:** I would be speculating on what the decision-makers were thinking when they made the decisions they did. I would say, I wouldn't be able to answer that.

**Mr. Gilles Bisson:** Did it make any sense fiscally to do that? Would you say as an auditor, over many years of reviewing how we spend money, did that decision make any sense fiscally?

**Ms. Bonnie Lysyk:** In which particular decision?

**Mr. Gilles Bisson:** The Napanee decision.

**Ms. Bonnie Lysyk:** To negotiate for the Napanee?

**Mr. Gilles Bisson:** For the expedited—yes.

**Ms. Bonnie Lysyk:** If we do look to page 8, page 8 is telling us that there were costs incurred beyond the costs of building a 900-megawatt plant in Oakville—

**Mr. Gilles Bisson:** Would you say this was fiscally prudent on the part of the government?

**Ms. Bonnie Lysyk:** I guess I would say that there were more costs incurred in this arrangement than perhaps what would have been incurred—

**Mr. Gilles Bisson:** So it wasn't fiscally prudent, then?

**Ms. Bonnie Lysyk:** I would say that obviously \$675 million or the estimated costs associated with the decisions leading to the cancellation—

**Mr. Gilles Bisson:** If it was your money, would you have made this decision?

**Ms. Bonnie Lysyk:** I should say, I wish I had this money.

**Mr. Gilles Bisson:** I've just given it to you. Would you have made this decision if it was your money?

**Ms. Bonnie Lysyk:** I can't walk in other people's shoes to prejudge their decisions. Things—

**Mr. Gilles Bisson:** Let's pretend they're your shoes. If it was your money, would you have made this decision?

**Ms. Bonnie Lysyk:** I'm going to say: What are the lessons that we see from this exercise? We see that there's community opposition to something. Would you discount that in the assessment of the sites to select? That would be one thing that maybe we would say is a little different than what I might assume would normally

occur. There are circumstances I guess around all these decisions that obviously we've questioned in the report. But again, I don't want to prejudge the decisions that people made. I think that's for you to ask the people involved in this, why did they make the decisions they did—

**Mr. Gilles Bisson:** I'm going to try again. I'm going to ask you: If it was your money, would you have made this decision?

**The Chair (Mr. Shafiq Qaadri):** Mr. Bisson, two things—

**Mr. Gilles Bisson:** It's a question.

**The Chair (Mr. Shafiq Qaadri):** One, if you might not take phone calls during committee testimony, especially when you're the actual questioner.

**Mr. Gilles Bisson:** Very good, Chair. It's a good idea—a very good idea.

**The Chair (Mr. Shafiq Qaadri):** Secondly, Ms. Lysyk has already gone on record that her spending habits are beyond personal—

**Mr. Gilles Bisson:** No. Chair, with all due respect, I'm allowed to ask questions. I'm asking a question, and I can ask a question repeatedly. There's nothing in the standing orders that prevents me from doing that. So I'm just asking the question: If it was your money, would you have made this decision?

**Ms. Bonnie Lysyk:** I go back to the process. I guess I would probably take into account opposition to the construction of something. At the end of the day, I would make sure the contract protected me, and I would probably hope that at the end of the day it did. I guess I'd put in place a contract that I think should protect me. Obviously this didn't work that way. So would I end up in the same place? I guess I would hope not.

**Mr. Gilles Bisson:** Okay. Thank you.

**Mr. Peter Tabuns:** Kathleen Wynne signed a cabinet minute that let the government proceed with the arbitration process you describe here. Did that arbitration process favour Ontarians or favour TransCanada?

**Ms. Bonnie Lysyk:** No. The arbitration process favoured TransCanada Energy versus the Ontario Power Authority—the arbitration framework.

**Mr. Peter Tabuns:** And what potential cost implications could this have?

**Ms. Bonnie Lysyk:** Well, it really tied OPA's hands and gave them less negotiating strength, because it really said, "Ignore the force majeure provisions, ignore the fact that TransCanada Energy wasn't allowed to get their permits and approvals." So you take that away and now you're left with having to make a deal with no strength on your side.

**Mr. Peter Tabuns:** Can you describe the legal opinion that the OPA received about the risk of litigation? You reference it.

**Ms. Bonnie Lysyk:** I'm cognizant of what we have in our files as being confidential versus what is already public, and I'm just sensitive to the fact that anything in our working papers is confidential, so I'd like to limit my comment to what's in the report. I think we've com-

mented that there was a legal opinion received, but as to the content of that, beyond what's in the report, I would be uncomfortable talking about that.

**Mr. Peter Tabuns:** I may come back, but how many times had TransCanada filed notice of force majeure?

**Ms. Bonnie Lysyk:** Twice.

**Mr. Peter Tabuns:** Twice, okay. Were the same people involved in this audit as were involved in the Mississauga audit?

**Ms. Bonnie Lysyk:** That's correct.

**Mr. Peter Tabuns:** And did you use the same methodology?

**Ms. Bonnie Lysyk:** Yes, the same methodology was used as well.

**Mr. Peter Tabuns:** Yesterday, the Premier referred to your report as an estimate, and you've used the word "estimate" from time to time, but she highlighted uncertainty, whereas when Mr. McCarter's report came out, those terms weren't used. Do you understand why she's taking a different approach to your report?

**Ms. Bonnie Lysyk:** The Mississauga report—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bisson and Mr. Tabuns. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Good morning, Auditor.

**Ms. Bonnie Lysyk:** Good morning.

**Mr. Bob Delaney:** Good to have you.

**Ms. Bonnie Lysyk:** Thank you.

**Mr. Bob Delaney:** I'd actually like to pick up where my colleagues left off. You've just stated that the arbitration agreement took away the force majeure provisions. The directive to set up the arbitration agreement wasn't signed until eight months after the very public announcement that the Oakville plant was being relocated, which was a decision supported by both opposition parties.

So, Auditor, what's clear from the testimony and the documentation that we've seen is that establishing an arbitration agreement was a necessary step to help move the negotiations along. Experts have confirmed to us here that if the two sides couldn't reach an agreement through negotiations, it was much better to go to arbitration than it was to go to court through a litigation process. What we've heard in the committee is that there was a serious risk of being sued by the company—in this case TransCanada Energy—if this step wasn't taken, and this was determined to be a preferable route to litigation since the court process would be long; it would be complicated; it would be, as one witness said, fraught with risk; and would be extremely expensive. So the arbitration agreement reflected promises that had been made in the OPA's termination letter to TCE on October 7. You saw that letter, right?

**Ms. Bonnie Lysyk:** Yes.

**Mr. Bob Delaney:** Okay. So the letter had been written by Colin Andersen of the OPA, approved by the entire board on October 7, 2010, and ultimately the province and TCE finalized a deal to relocate the plant to Napanee, outside the terms of the arbitration agreement.



In fact, at that time, arbitration was paused and a settlement was reached.

Could you clarify some of the opinions you've just been expressing to the committee around that?

**Ms. Bonnie Lysyk:** Well, I guess in terms—

*Interjections.*

**Ms. Bonnie Lysyk:** I'm sorry. It's just hard to concentrate.

**The Chair (Mr. Shafiq Qaadri):** Colleagues—Ms. MacLeod, Mr. Yakabuski, the auditor herself is asking for silence.

**Ms. Bonnie Lysyk:** So in terms of the original letter—right?—the original letter indicated that OPA would not be proceeding with the contract, that TCE was to cease all future work and activities in connection with Oakville and that TCE was entitled to reasonable damages, including the anticipated financial value of the original contract. So that letter was key in putting in writing for TransCanada Energy the fact that now they were entitled to the financial value of the original contract, and they requested that that letter be written so that they had information on paper.

0920

The OPA was asked to put a paragraph in there that gave them that responsibility. That last sentence, that “reasonable damages including anticipated financial value,” was not something that OPA had in their original draft. They were asked to put that in there.

Now you go from there to the arbitration framework. So right there with that letter, you're saying that TransCanada Energy is entitled to reasonable damages, even though TransCanada Energy wasn't able to get the necessary permits and approvals under the contract that they were required to do. They had started to approach the Premier's office because they knew that they were having trouble, and they knew there was a condition in the contract that they had to have this information. So then they were making appeals, which is why they filed two forces majeures: because they recognized that they were having problems under the contract.

So then they drafted—you're right—the framework for arbitration. That framework waived the clause, again, that gave the OPA a defence, a defensible claim of not owing TCE for profit. So it just reiterated the original letter and stated that only if government took discriminatory action through legislation or similar means would the OPA be liable for damages. I'm sorry; I'm going on here. But basically that framework that they put in place wasn't in OPA's favour. It was already concluding, the same way that that original letter concluded, that TransCanada Energy was entitled to profits.

**Mr. Bob Delaney:** Who is the “they” that put it in place?

**Ms. Bonnie Lysyk:** I guess that would be a question for OPA to answer. During the process that we conducted our review, we spoke to people at Ontario Power Authority, but I think that's the committee's responsibility. We don't put names in our report, but there was communica-

tion between the Ontario Power Authority and the government.

**Mr. Bob Delaney:** I'd like to move back, then, to the question of the sunk costs. You confirm in your report that OPA had paid \$40 million to TCE to cover sunk costs. You said earlier that that likely would have been paid in any event, no matter how this transaction had transpired, right?

**Ms. Bonnie Lysyk:** Yes.

**Mr. Bob Delaney:** Okay. When the relocation deal was finalized on September 24, 2012, the OPA published a final memorandum of understanding and a news release on their website that stated—and I'll use the exact words—“The cost of TransCanada's plant at Lennox will be comparable to the cost of the original competitively procured Oakville plant.” The only cost it provides is \$40 million for sunk unrecoverable costs.

The government, in fact, was criticized for not providing a fuller picture last fall beyond the sunk costs, but the OPA has testified that, at that time, the future costs and savings estimate were, in fact, unknown.

I've got a couple of quotes here that I'd like to put on the record before I get to my question. Colin Andersen, OPA CEO, told us, in his words, “They relied on OPA numbers, and that's true. We did provide them with the numbers. That is what you would expect.”

He also stated—

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, just before we continue, I appreciate that CBC wants the right angle, but if you could just—thanks.

Go ahead.

**Mr. Bob Delaney:** Thanks, Chair.

Colin Andersen also stated, “It's true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized, if you will, at that point in time....”

“There were other elements that were noted ... but none of them had a number attached to them at that point in time.”

And Jim Hinds, the OPA chair, testified, “The broad categories of the costs were known at the time—the costs you identified. The costs that were specifically known at the time that the MOU was released were the sunk costs. The others were costs to be determined....”

Is it reasonable to assume, then, and would you agree, that the OPA's costing that was available at the time the memorandum was signed was that figure that was provided to the public?

**Ms. Bonnie Lysyk:** I guess I would suggest that, having worked in a utility before—I had 10 years at Manitoba Hydro—when you're in a negotiation for a deal, you have a lot of people behind you preparing material and giving you the costs of the deal. Purely, in my own opinion, versus what I show in the report right now, having been involved in that process, it would be likely that people would know what a deal would cost. If they don't know what a deal would cost, then I would say there's concern around the fact that they signed a deal without knowing what it would cost. So from a logical



perspective and from my experience in those types of things, I would assume that people knew what the deal would cost.

Maybe in the time frame that they negotiated it, which was 12 days, by virtue of Colin's response here, they might not have had all their metrics and their forecasting models together, but, at the end of the day, with respect to the turbines, the turbine cost was a known. The turbine was asked to be modified by—OPA asked TransCanada Energy to have the supplier modify the turbines once they signed the memorandum of understanding for the Kitchener-Waterloo plant. That would have come with information.

Now, do we comment on that in the report with respect to that? We do know that there is a lot of information at Ontario Power Authority that has been created around the deal. So I think it is a good thing if you're looking for answers on dates, that that material is likely in the material provided to you.

**Mr. Bob Delaney:** So am I to understand, then, that in your report, you base it not on what you knew but on what you assumed?

**Ms. Bonnie Lysyk:** No. I would say that I'm not going to be speaking to material that's not written in the report. You asked a question, and I answered it on my experience outside of this particular audit.

*Interjections.*

**Mr. Bob Delaney:** Chair, can I actually hear the answer here?

**The Chair (Mr. Shafiq Qaadri):** That would be advisable.

**Mr. John Yakabuski:** We're still laughing at the question.

**The Chair (Mr. Shafiq Qaadri):** Colleagues. Thank you.

Go ahead, Mr. Delaney.

**Mr. Bob Delaney:** Am I then to understand that in your report, it's based not on what you knew but on what you assumed?

**Ms. Bonnie Lysyk:** No. The content of the report is based on what we knew.

**Mr. Bob Delaney:** Okay.

**Ms. Bonnie Lysyk:** During the course of an audit, there's a lot of information that is accumulated, and in order to put down on paper the estimated costs, we put on paper the information that we think fits with that mandate, and the mandate was to quantify the cost versus a comment on all the decisions along the way.

**Mr. Bob Delaney:** Back in September 2012, the OPA informed the government that the lower net revenue requirement, which is the monthly cost of the new contract, would offset the cost of the gas turbines and the gas management and delivery. In your report, you state, to use the report's language, "The OPA told us that one of the reasons it will be paying a lower" net revenue requirement "for the Napanee plant's power is to offset its assumption of this cost."

What do you think of the OPA's assumption that future savings would offset future costs was ultimately incorrect?

**Ms. Bonnie Lysyk:** I didn't hear the very last part of your question. Sorry?

**Mr. Bob Delaney:** What do you think of the OPA's assumption that future savings would offset future costs? Was that ultimately incorrect?

**Ms. Bonnie Lysyk:** There's an NRR under the Oakville contract and there's an NRR under the Napanee contract, and the difference between that is an amount—it's \$275 million. That difference is the amount that we would look at to see whether or not they had any benefits to offset that amount. That's part of why there is a difference that shows up in the \$675 million number, because in our opinion, in the calculations here and in our evidence, there wasn't enough benefit to make up the difference in the NRR.

**Mr. Bob Delaney:** Okay. Thank you. I want to ask you a few questions about the timing of when you predict the Oakville plant would have been operational. In your report, you estimate that, all things considered, including municipal bylaws and the numerous court appeals, as well as a possible appeal to the Supreme Court by the mayor of Oakville, the plant construction would have begun in mid-2012 and been completed by December 2015, which is, I think, what you have in your report.

0930

In making this, you make the leap to perhaps pre-suppose the timing of how quickly all of this would have moved through the courts. I'd say it's probably very difficult to predict whether it would have actually made its way to the Supreme Court of Canada. Obtaining leave to bring a matter to the Supreme Court of Canada is more extraordinary than routine; would we agree on that?

On what basis have you presumed the progress of litigation throughout this procedure and come to the point that it would have been possible to, to use the report's language, "wait it out"?

**Ms. Bonnie Lysyk:** We relied on an external legal opinion that we received that looked at how long it would take for the situation to be addressed, like all the bylaw issues to be addressed and then all the potential court actions, and in this assumption, we assumed that everything would be ruled in favour of TransCanada Energy, so the legal opinion assumes everything would work in TransCanada Energy's support in reaching that date.

The other side of that is, if Oakville had decided to take it to the Supreme Court, that would have extended the date. We used that date in looking at—in calculating the no payments to TCE until 2017, and that resulted in \$162 million. If we had done this assuming the plant would never have come in service, that savings would be zero. So we thought we were being reasonable in suggesting that the savings was at least \$162 million.

**Mr. Bob Delaney:** So your legal opinion, then, just to reconfirm, presumed that every decision would be made in favour of TransCanada Energy?

**Ms. Bonnie Lysyk:** Correct.

**Mr. Bob Delaney:** So, given the obstacles posed by the bylaws that were enacted by the town of Oakville, you then suggest that it still would have been possible to



wait it out and to enable the OPA to walk away from the contract?

**Ms. Bonnie Lysyk:** Again, because the—and I think you’ve had before you the mayor testifying that they would have taken it to the Supreme Court. If they had taken it to the Supreme Court, that would have extended that date, and so it would have extended it beyond the date that we have here. This extension that we have is only a few months shy of the 24-month period after the original in-service date.

**Mr. Bob Delaney:** Okay. Again, I’m going to come back to your legal opinion that assumes all of the decisions would have been made in favour of TransCanada. Your report correctly notes that TransCanada was actively fighting the bylaws, with five appeals at the Ontario Municipal Board and three appeals in Divisional Court.

**Ms. Bonnie Lysyk:** Correct.

**Mr. Bob Delaney:** We had Chris Breen, a TransCanada representative, here, who testified at the committee, and he told us, “We had a contractual obligation. It was very cleanly spelled out in black and white that that was our responsibility: ‘You have to go through every possible channel to deliver on your obligations in this contract.’ And we would have done that.” He also said that “TransCanada were confident that they were going to eventually get to build the project on the Ford lands....”

If you had a legal opinion that made the assumption that every decision would fall in favour of TransCanada, how could you arrive at a conclusion different from TransCanada that—and I’ll repeat it again: “TransCanada were confident that they were going to eventually get to build the project on the Ford lands,” which is the Oakville site. Could you explain the discrepancy there?

**Ms. Bonnie Lysyk:** Again, the reason the in-service dates were important in this document is because in calculating the \$310 million that OPA testified to, they used the original in-service date of the plant. We knew that the plant would never be able to be ready by the in-service date, given what was happening, so we were actually looking at this from a realistic perspective in terms of the time it would take for TransCanada Energy to have worked it through everything. If the plant had never gone ahead, this \$162-million savings wouldn’t have been incurred.

I guess, at the end of the day, when we did this calculation and when we relied on the information that we received, we believed that this is representative of what is a reasonable scenario that would have played out. In our opinion, we think it was fair in the calculation leading up to the \$675 million to at least assume the plant would have come in service. Had we assumed the plant would never come in service, there would be no savings here.

So to your question, OPA assumed it would come in service by the original date. It was never going to meet that original date, based on the fact that there were all those things pending. So—anyway, I’ll leave it at that.

**Mr. Bob Delaney:** Okay. We had just recently Ben Chin, who was at the time employed by the Ontario

Power Authority and he worked very closely on this file. When he testified to this committee, he said that he thought TransCanada was very confident in their legal opinion. Was there a very real possibility that the courts would have ruled in the proponent’s favour and TCE would have been able to start construction?

**Ms. Bonnie Lysyk:** You’re asking me to guess, and I can’t guess. We use a logic that I’m comfortable with in reaching our numbers in this report. I wouldn’t begin to guess what the actuality of everything would have been. We put together what I think is a reasonable estimate.

**Mr. Bob Delaney:** Though your conclusion that the OPA could have waited it out is speculative, by your own admission.

**Ms. Bonnie Lysyk:** No. I think the way we laid it out is that, given the scenario that was happening, if 24 months had passed after the in-service date and they had not been able to construct the plant, meet the commitment—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the PC side: Mr. Yakubuski.

**Mr. John Yakubuski:** I’m happy to be joining the conversation—not half as happy as the people in the Premier’s office, I’m sure.

First of all, thank you very much for joining us, and thank you for this thorough report.

I want to speak to Mr. Delaney’s questions for a minute. You know, the one thing that is wonderful about when the auditor comes to visit us is that we know that someone is coming here with no motivation other than to do their job, which is to inform the people of Ontario what happened in their judgment with respect to a specific situation. Today, we’re dealing with the Oakville power plant cancellation costs, not with the multitude of speculative questions that Mr. Delaney put forward to you—and I apologize for those questions, because it seems to me that he’s questioning your competence in your report. We certainly don’t do that. We make it very clear that we accept—

**Mr. Bob Delaney:** Chair, on a point of order.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, on a point of order.

**Mr. Bob Delaney:** Chair, we are governed by the standing orders of the Legislative Assembly, and I would appreciate it if my colleague did not speculate on my motives.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, your point is well taken. Colleagues, let’s return to parliamentary decorum.

**Mr. John Yakubuski:** Yes. Thank you very much, Chair—that we accept your report as written.

He touched on Chris Breen’s testimony. Of course, Mr. Breen was here as a representative of TransCanada and offering opinion. Now, you’ve been in the corporate world, you’ve worked for Manitoba Hydro; you understand that if Mr. Breen had come here and said, “We never believed the project would get off the ground or be finished,” the shareholders of TransCanada would be very upset. Would you not agree to that? You’re an auditor; you know how money works.



**Ms. Bonnie Lysyk:** I guess I could say that your view as TransCanada Energy would be to maximize the return for your shareholders.

**Mr. John Yakabuski:** Absolutely. Thank you very much, Ms. Lysyk.

Now I want to talk a little bit about the fact that he's speculating about the possible success in a court case from the government when all the cards were in TransCanada's favour. On top of that, if you go to page 15 of your report, the Premier is on record as having absolutely demanded that we keep TransCanada whole in whatever negotiations go on with respect to the cancellation of this plant. That's not an opinion. You bring here the facts, and that is a factual matter. Is that not correct?

0940

**Ms. Bonnie Lysyk:** The information that we have in the report is factual around the letter, yes.

**Mr. John Yakabuski:** Absolutely. Thank you very much.

Now I want to talk about the turbines. We had the current Premier and former Premier talk about \$40 million and then possibly only \$33 million in actual costs for the cancellation of the Oakville plant, but all along—and that is on page 18—it was clear that prior to the visit by Premier Wynne this year, TransCanada had been paid for the turbines. They had already been paid for those turbines. I'm trying to understand how a government could say that \$210 million of our money was paid out, but that it's somehow not real. TransCanada was paid for those turbines prior to the Premier's visit here this year. Is that not correct?

**Ms. Bonnie Lysyk:** I'm sorry. We don't have the exact date of the payment for you.

**Mr. John Yakabuski:** No, but it does say: "Under one of the December 2012 settlement agreements, the OPA paid TCE \$210 million to cover gas turbine costs."

**Ms. Bonnie Lysyk:** Yes. I just don't have the date for you, but it has been paid.

**Mr. John Yakabuski:** You don't have the date. Okay. Would we be able to get that date, or is that confidential?

**Ms. Bonnie Lysyk:** Yes. We can provide the date to the committee.

**Mr. John Yakabuski:** That would be excellent if we could have that actual date, Madam Auditor. Thank you very much.

I want to go back now to the line of questioning, which I think is the nub of the matter. The government keeps talking about how they—incidentally, the day after the Speaker ruled against the government on the matter of privilege in the House, all of a sudden we have this deal announced to move this plant to Oakville. I don't think it happened overnight at an all-night coffee shop or something; something must have been in the works. The additional cost to move this plant to Oakville of \$513 million, by your calculation—I'm asking you to speculate, but I'm only asking you to use your logic; you used that word quite a bit here today. If you would use your logic, it is impossible for the government to conclude that each of the other two political parties would have made

the same decisions. They argue up and down—"Well, you were in favour of the cancellation. You were in favour of the cancellation." We never thought it should have been built there, but would it not be fair to say that it's impossible for them to argue that the identical decision would have been made by either or both of the other two political parties, the opposition parties?

**Ms. Bonnie Lysyk:** I can't respond to that question. I'm sorry.

**Mr. Gilles Bisson:** We can answer that if you want.

**Mr. John Yakabuski:** Yes, we can answer that. I think it's fair enough that we ask the question. It just seems, Ms. Lysyk, that they keep going on and on, somehow trying to make this a tri-party operation here, that the three parties somehow collaborated on this. When it's in their favour, they like to talk about co-operation between parties, but there was no consultation whatsoever between anyone but the Liberal Party, the OPA and the folks at TransCanada, and much of that, quite frankly, came out of the Premier's office.

You talked about how the—and Mr. Delaney chooses to disagree with your findings; that's entirely up to him; I accept them for what they are—

**Mr. Bob Delaney:** Chair, on another point of order.

**The Chair (Mr. Shafiq Qaadri):** Point of order, Mr. Delaney.

**Mr. Bob Delaney:** I would appreciate it if my colleague from Renfrew–Nipissing–Pembroke didn't tell me what I did and didn't decide to do on something I never said.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Yakabuski, continue, please.

**Mr. John Yakabuski:** I thank you for your admonition.

This court case—if it goes 24 months past the commercial operation date of February 2014, basically the contract is null and void. Correct? If, 24 months past February 2014, they don't have a plant in operation, the deal is dead.

**Ms. Bonnie Lysyk:** Our understanding is that the provisions in the contract would allow both parties to walk away from the deal.

**Mr. John Yakabuski:** Penalty-free?

**Ms. Bonnie Lysyk:** How that would end up being, I would be speculating. But it would be less—

**Mr. John Yakabuski:** Yes. We recognize that—

**Ms. Bonnie Lysyk:** It would be less than—I could say that I think we'd be comfortable in saying it would be less than the \$675 million.

**Mr. John Yakabuski:** Yes. I mean, there would be, understandably, some legal costs because a court case would have been proceeding to that point, but even if they resurrected Johnnie Cochran, it's not going to cost \$513 million.

**Ms. Bonnie Lysyk:** I would say it would be less than the \$675 million that we have on page 8.

**Mr. John Yakabuski:** Yes, and I'm just using the \$513 million, the additional cost. Just the additional cost—I think we really have to hone in on that one. Just



the additional cost of making the decision to move that plant to Napanee, where the power's not needed—how could that be considered anything but a decision for political expediency? There's not a single logical justification—and as you say, you worked in the hydro business. There's not a single justification from the point of view of providing power to the people of Ontario for moving that plant to Napanee. From your previous expertise, would that be a fair conclusion?

**Ms. Bonnie Lysyk:** You know, in the way the question is phrased, I can't comment on that.

**Mr. John Yakabuski:** Could I make it softer?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. John Yakabuski:** I've already certainly drawn my conclusions. I think what's important here—and what we really appreciate is the way that you've brought the facts forward to us. The conclusions will be left to be drawn by the people of Ontario, and that's where the real issue's going to be dealt with, because we were led all along down this garden path that it was \$40 million and then they come up with the \$310 million, and thank goodness for your report, because now we know that this plant could cost \$675 million, plus the \$140 million in extra gas tolls because of another deal made with TransCanada to compensate them for the upgrades to the gas transmission up to Napanee. Correct?

**Ms. Bonnie Lysyk:** You know, I can't comment on—I don't know what the direct question is—

**Mr. John Yakabuski:** I'm just giving you the number. So you stand by, absolutely stand by, the numbers in your report?

**Ms. Bonnie Lysyk:** Yes.

**Mr. John Yakabuski:** Thank you very much.

**Ms. Bonnie Lysyk:** I can provide the answer to the turbines. They were purchased on December 14—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. Just before I offer it to the NDP, I might just remind all colleagues respectfully that the Auditor General and her colleagues are here actually to speak about the report that was tabled. I sense there's a struggle going on with some of the questions, but in any case—

**Mr. Peter Tabuns:** You've stopped the clock, of course, haven't you, Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** I have, Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Your time officially begins now.

**Mr. Peter Tabuns:** Ms. Lysyk, if you just want to finish your sentence that you were putting forward when the gavel came down?

**Ms. Bonnie Lysyk:** Yes. The turbines were paid for on December 14, 2012—\$210 million.

**Mr. Peter Tabuns:** Okay. You've already made it pretty clear to us that you stand by your numbers, that you feel they're a fair and accurate assessment?

**Ms. Bonnie Lysyk:** Yes.

**Mr. Peter Tabuns:** All right. The Premier's office directed the OPA to abandon part of their contract when they gave them the letter of cancellation to say, "No, we

will make you whole." Was the province obliged in any way to do this?

**Ms. Bonnie Lysyk:** Again, I don't know what the reasons were. I just know that the OPA was asked to put together the letter that was issued on October 7.

**Mr. Peter Tabuns:** Well, I'm not asking you for the reasons. Was the province obliged to convey to TransCanada that, "You will be made whole"—legally obliged?

**Ms. Bonnie Lysyk:** Again, the one part of that is that I'd be speculating on what the verbal communications and promises were that led up to the creation of the letter.

**Mr. Peter Tabuns:** Did the contractual relationship with TCE require Ontario to make TransCanada whole when this project was cancelled? Nothing about verbal promises, just black and white to paper.

**Ms. Bonnie Lysyk:** I'm more comfortable speaking to that and saying that if the 24-month period had been missed, both parties would have walked away from the contract. With respect to all the activity and communications that led up to this letter, again, I'm not sure that we even have all the information to be commenting that way on it.

0950

**Mr. Peter Tabuns:** Okay. I'm actually not asking for all the letters and the conversations. Did the contracts oblige Ontario to keep TransCanada whole?

**Ms. Bonnie Lysyk:** We think there were conditions in the contract that, if relied on, would perhaps not have required the province to incur the costs associated with making TCE whole.

**Mr. Peter Tabuns:** So ratepayers, taxpayers, they had protections in that contract. Were those protections simply abandoned?

**Ms. Bonnie Lysyk:** The Ontario Power Authority and TransCanada Energy had negotiated a contract where there were protections for both sides.

**Mr. Peter Tabuns:** And Ontario's protections were abandoned when the letter was sent to TransCanada telling them, "This plant's cancelled."

**Ms. Bonnie Lysyk:** I guess from what we see, there were representations made to TransCanada Energy that culminated in a letter that placed a commitment on the Ontario Power Authority to compensate TCE for the financial value of the original contract.

**Mr. Peter Tabuns:** And that was outside the scope of the original contracts.

**Ms. Bonnie Lysyk:** I think the Ontario Power Authority took issue with the fact that this was being requested of them.

**Mr. Peter Tabuns:** Okay. You note that because the gas line coming into the Napanee plant is not big enough to provide enough gas, enough volume for this plant, there will have to be a substantial investment and expansion of the line's capacity. Is the full weight of that expansion cost borne on the shoulders of the Ontario Power Authority?

**Ms. Bonnie Lysyk:** Attached to the agreement there is the responsibility to cover capital investments associated



with the expansion of the pipeline that's needed to transport the gas to Napanee. But TransCanada PipeLines would have the opportunity to define how they want to recoup that money, and they would likely recoup it in tolls. They could increase tolls for all users of the pipeline to then recoup the capital costs that way. The \$140 million that we have estimated in here would be the portion that the Ontario Power Authority would have to pay if the tolls were increased to 50% of the current toll rate, and that's only up till the next three years.

**Mr. Peter Tabuns:** So the gas plant will have to pay more to help expand this line, and the other gas distributors who take gas off this line will have to pay more. I assume that the town of Napanee, the city of Kingston, Cornwall—all of those people in those towns are going to have to pay more because the cost of this pipeline expansion is going to be on their bills.

**Ms. Bonnie Lysyk:** I can't comment on the impact on the communities.

**Mr. Peter Tabuns:** But the local distributors are going to be paying more?

**Ms. Bonnie Lysyk:** The users of the pipeline have had discussions with TCPL and reached an agreement—a tentative agreement, not a final agreement—around what the rates could potentially be, and that's the basis behind the \$140-million estimate.

**Mr. Peter Tabuns:** And the local users are the local gas companies?

**Ms. Bonnie Lysyk:** No. Gaz Métro, Union Gas and Enbridge.

**Mr. Peter Tabuns:** So it's entirely possible that homeowners in Kingston will be paying more in the future for their gas because of this plant, because of this deal.

**Ms. Bonnie Lysyk:** Again, I'm not familiar enough to comment on that.

**Mr. Peter Tabuns:** Did you receive a briefing on the request-for-proposals process that led to the plant being put in place in Oakville in the first place?

**Ms. Bonnie Lysyk:** Well, the audit team received information from the Ontario Power Authority around that process, yes.

**Mr. Peter Tabuns:** And do you know why the Oakville plant was picked over other proposals? You note there were four. I think three were in Mississauga and one in Oakville.

**Ms. Bonnie Lysyk:** Yes. There were three in Mississauga and one in Oakville. At the end of the day, the Oakville one was selected. Although we haven't described it in detail, yes, the process was one of lowest bidder, and the lowest bidder was chosen.

**Mr. Peter Tabuns:** Okay. So it was the lowest bidder in this case?

I guess a question that comes to mind is, given what Oakville was doing at that point, could anyone have built a plant in Oakville? The city of Oakville was mobilizing; it mobilized six months before this contract was signed. It started putting in place a series of legal defences to

block this from happening. Would anyone else have been blocked from putting in a plant as well?

**Ms. Bonnie Lysyk:** That I don't know.

**Mr. Peter Tabuns:** Is there any good reason that TransCanada should have come out of this deal further ahead than it was when it went in in the first place?

**Ms. Bonnie Lysyk:** I can't go back and comment on what TransCanada Energy's thoughts were on this and OPA's thoughts were on this, and the province's. All I can comment on is that our estimate indicates that the Napanee plant will cost more than the Oakville plant did.

**Mr. Peter Tabuns:** And—sorry, and that TransCanada will make more money out of this than they would have?

**Ms. Bonnie Lysyk:** Well, we have a section on page 10, section 3.2, and it's called "Benefits to TCE." How we determined benefits to TransCanada Energy, we looked at the change in the net revenue requirement under the Napanee agreement and under the Oakville agreement, and then took into account that under the new Napanee agreement, the Ontario Power Authority assumed more risk and more costs associated with the delivery of gas and the transmission. Those before had been factored into the Oakville contract. When we did the math, at the end of the day, it indicated that there are costs that TransCanada Energy doesn't have to cover anymore that they would have covered under the Oakville deal.

**Mr. Gilles Bisson:** If you were in the market of hiring somebody to negotiate on your behalf a cancellation of gas plants, would you have hired this crew?

**Ms. Bonnie Lysyk:** I can't comment on that.

**Mr. Gilles Bisson:** Well, would you?

**Ms. Bonnie Lysyk:** You know what? I'm trying to be factual, that's—

**Le Président (M. Shafiq Qadri):** Monsieur Bisson, merci pour de spéculation, mais s'il vous plaît—

**Mr. Gilles Bisson:** No, it's not a speculation. Chair, it is a question. Would you hire these people to negotiate on your behalf, if you were cancelling a gas plant, knowing what you know now?

**Ms. Bonnie Lysyk:** And again, at the end of the day, I probably would hope that I wouldn't have to pay more than the cost of the Oakville plant in this case—

**Mr. Gilles Bisson:** So the answer is no.

**Ms. Bonnie Lysyk:** I'm not going to—it's a hypothetical question. I won't answer that. I'm sorry.

**Mr. Gilles Bisson:** Thank you. That was my question. I got my answer. It's what I wanted.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Bisson. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Thank you, Chair. In your report on page 7, you state: "About two thirds of the net costs we have estimated have yet to be incurred, and all of the savings are estimated to be realized in the future." By the future, what you mean is over a 20-year period, correct?

**Ms. Bonnie Lysyk:** Correct.

**Mr. Bob Delaney:** Okay. In that 20-year period, would those costs be averaged in a linear sense? Would they be front-end or back-end loaded?



**Ms. Bonnie Lysyk:** Spread over—a lot of these would be spread over the 20-year period.

**Mr. Bob Delaney:** So although the arithmetical mean may not be correct in every year, it would be in approximately a straight line, right?

**Ms. Bonnie Lysyk:** Correct.

**Mr. Bob Delaney:** Okay. So your office, then, took a fairly long-term and forward-looking view when you made your costing, correct?

**Ms. Bonnie Lysyk:** Yes, consistent with OPA's methodology in looking at this.

**Mr. Bob Delaney:** Okay. It would have been a fairly complex process for your office then to arrive at these numbers. I think in your news conference on Tuesday, you said that your findings weren't finalized until, to use your words, a week and a half ago, correct?

**Ms. Bonnie Lysyk:** The finalization of the draft report wasn't completed till a week and a half before.

**Mr. Bob Delaney:** You also cautioned that there is considerable uncertainty when dealing with future events and that the cost estimates, and I'll use your words, "are based considerably on judgment." Can you explain to the committee why it's so difficult to pin down these estimates?

**Ms. Bonnie Lysyk:** Well, what you're dealing with, you're looking at the present value of future cost expenditures, so you are factoring in an interest rate assumption. We are factoring assumptions about the in-service date both of the Oakville plant and of the Napanee plant. And then, there are still, with respect to the tolls, negotiations to happen on that and things to happen to confirm what that will be at the end of the day. So we do appreciate that this is somewhat different from Mississauga. With Mississauga, there were actual costs that were involved. Two thirds of the costs here are estimates, and that's why we've been very careful in that wording, to indicate to people that we are using estimates and assumptions.

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**Mr. Bob Delaney:** Okay. So it is based on your best guess, using generally accepted accounting principles, right?

**Ms. Bonnie Lysyk:** I would say that it's not a guess, and I would say that it doesn't have any association with generally accepted accounting principles. It's looking at the situation and understanding what the costs would be on a go-forward basis, discounting those cash flows backwards to determine a present value, and also getting a better understanding around why some of these costs would be incurred. So we had discussions with consultants, experts, OPG, Hydro One and the distribution system, IESO.

**Mr. Bob Delaney:** Okay. On Tuesday, the OPA put out a statement that thanked you for your report, and they said in the statement that they stand by their estimate of \$310 million—

**Ms. Bonnie Lysyk:** I know.

**Mr. Bob Delaney:** —for the relocation cost of moving the plant from Oakville to Napanee, and that's

the same estimate that they provided to the committee more than six months ago, on April 30. In fact, in their release, they note that the difference between your estimate and theirs is largely attributable to the fact that you used different rates to put future costs and savings in today's dollars and used different in-service dates for the plants, correct?

**Ms. Bonnie Lysyk:** Correct.

**Mr. Bob Delaney:** So getting to the in-service dates in a minute, just to concentrate for a moment on these discount rates, in your report you note that the OPA used a 6% discount rate and your report used a 4% discount rate.

**Ms. Bonnie Lysyk:** Yes.

**Mr. Bob Delaney:** There does seem to be a number of arguments in favour of both discount rate ranges. For example, a Ministry of Finance report from August 2012 recommended that a 5.5% rate is the most appropriate to be used in determining anticipated streams of costs and benefits that accrue to society over time, and they would argue that 5.5% best reflects the opportunity cost of private capital and the current cost of Ontario government borrowing.

So given the various arguments, could you comment on whether a 6% discount rate is unreasonable, or do you understand the OPA's rationale for using it?

**Ms. Bonnie Lysyk:** Again, we think the 4% that we used is more reasonable. We started by asking OPA, "Why did you use the 6% rate?" What we found when we asked them that question is that they've used a 6% rate for evaluating their projects since 2007, and they never adjusted that for the changes in the interest rates since 2007.

In their calculation in 2007, they used the rate of return on the long-term government of Canada bonds, and at that point, when they calculated their 2007 return, it was 4.5%. All we've done here is said, "This contract and the decisions around it were firmed up around December 2012." We used the January 1, 2013, government of Canada benchmark, so we just substituted that in for the rate they were using, and we come to a lower amount which is more reflective of the current environment. Plus, our exercise is really quite simplistic: We're looking at what the present value is of future dollars, so we're just discounting future cash flows back using a reasonable long-term interest rate. There's nothing more to that. So really, what we did is we mimicked OPA's calculation but brought it more current.

**Mr. Bob Delaney:** Auditor, is there any reason that you couldn't provide the committee with a table showing your calculations based on a 0.5% increment between 4% and 6%?

**Ms. Bonnie Lysyk:** Well, you know, again, what we have in the report is what we stand by. Maybe I'm not clear what you're asking.

**Mr. Bob Delaney:** No, I'm not questioning what's in the report. What I'm asking is, could you apply the same methodology and give us the analysis in half per cent increments, between 4% and 6%?



**Ms. Bonnie Lysyk:** I could show between 4% and 6%. If you look in the report right now and you look to page 19, we've looked at that. When the OPA uses 6%, the difference between their estimate and ours—\$235 million—is mainly due to the difference in the assumption dates around the start. In terms of your question, the impact between a 4% and a 6% discount rate is \$90 million.

**Mr. Bob Delaney:** But the question I'm asking is, over and above what's in the report, would it be possible for you to provide the committee with the analysis that you've done at rates of 4%, 4.5%, 5%, 5.5% and 6%?

**Mr. John Yakabuski:** You can figure it out, Bob. If it's \$90 million, you can figure out the breakdown between the other points. It's not difficult.

**Mr. Gilles Bisson:** I don't understand why, though, Bob. Why?

**Mr. John Yakabuski:** She's busy on other projects. There are other scandals coming up. I mean, come on.

**Mr. Bob Delaney:** Chair, I would appreciate the response coming from only one quarter.

**Ms. Bonnie Lysyk:** Sure, we can do that calculation and provide it to the committee.

**Mr. Bob Delaney:** That's fine. That was the whole question.

**Ms. Bonnie Lysyk:** That's not a problem.

**Mr. Bob Delaney:** Chair, how am I doing on time here?

**The Chair (Mr. Shafiq Qaadri):** One minute, 10 seconds.

**Mr. Bob Delaney:** Okay. Is it possible, then, given the difference—and a fairly significant difference—between the different discount rates, in 20 years from now is it possible that either the OPA's estimate of \$310 million or something close to it could be the actual total cost of the relocation?

**Ms. Bonnie Lysyk:** All I can say on that is that to determine the present value of future cash flows, we used the best information we believed we had available, and that was the long-term borrowing rate. As you know, interest rates can go up, interest rates can go down, and—this is obviously what you're asking—until costs are actually incurred, you're dealing with estimates here.

**Mr. Bob Delaney:** So it could be your number, it could be the OPA's number, or it could be something in between.

**Ms. Bonnie Lysyk:** I would say to you that in calculating the estimate of the bottom line today on the cost, we feel comfortable that our estimates are the right ones.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney, and thanks to you, Ms. Lysyk, for your testimony. We'll have you back at 1 p.m. We have a motion with Mr. Tabuns; we'll deal with that this afternoon.

Once again, I would just remind committee members respectfully that witnesses do not have to answer hypothetical or speculative questions. Interestingly enough, even if the question is rephrased, said in other languages or offered more politely, they still do not have to answer hypothetical or speculative questions.

With that, committee is now recessed till 1 p.m.

*The committee recessed from 1008 to 1300.*

**The Chair (Mr. Shafiq Qaadri):** Colleagues, the Standing Committee on Justice Policy is called officially to order. I welcome you to reconvene.

We have once again with us Ms. Bonnie Lysyk, the newly minted Auditor General of Ontario. We'll once again offer you, Ms. Lysyk, five minutes for your opening address, officially beginning now.

**Ms. Bonnie Lysyk:** Thank you, Mr. Chair. I just wanted to clarify a few points that were raised, either through questions or through comments, in the morning session.

One in particular dealt with the calibre and the quality of the work that was put into the report and led to question whether our work was done with an objective state of mind. I just want to say that the report that we have presented to the Legislative Assembly was done in accordance with appropriate auditing standards, as well we are comfortable that everything in our report has backup and support for the information that's being put forward to this committee. I just wanted to take that off the table, because I think there was some comment this morning that—after thinking about it, I didn't like that it was still on record that perhaps there was some question around the quality of the work, and I stand behind the work in the office and the work in the report. So I just wanted to make that point.

The second point I wanted to make is just a clarification of a couple of questions that came regarding dates. Yes, the turbine, I guess—we did confirm it this morning, but I want to say that that turbine was paid for in December 2012. And I did want to comment that in terms of September 2012, at that point the memorandum of understanding had already been agreed to and the memorandum of understanding already included estimates for turbines, as well as sunk costs. And that would have been in September 2012, so I wanted to clarify that.

The third thing I wanted to clarify is that Mr. Delaney had asked whether or not we would do some additional work. I went back and cogitated and had a discussion in the office, and the precedent of the office, when there was a request from an individual in the past, has been to say that, unfortunately, if there is something that is going to cause us additional work beyond the work that we have on our plate right now, we would not do that additional work on a member's request. However, if the committee as a whole here would pass a motion that they would want us to do something like Mr. Delaney had suggested, and that is re-estimate the figures using different discount rates, then by all means, as an office, we would do that. But I think at this point, I would like to respectfully say that we wouldn't be able to do that work for Mr. Delaney unless, of course, the committee as a whole wanted us to do that work. So I'd just like to clarify that.

I thank you for the questions, and I'm hopeful, if you've got more, that I'll be able to answer them to your satisfaction.



**Mr. John Yakabuski:** Thank you for that clarification. Perhaps Mr. Delaney just wants to give up his time this afternoon, then. He's come up—

**The Vice-Chair (Mr. Phil McNeely):** You've used your five minutes. Is that—

**Ms. Bonnie Lysyk:** I'm finished, yes.

**The Vice-Chair (Mr. Phil McNeely):** Okay. We'll now go to the official opposition. You have 20 minutes, Ms. MacLeod.

**Ms. Lisa MacLeod:** Merci, monsieur le Président.

Thanks again, Auditor. I just want to thank you for being here this morning and again this afternoon, and I want to, on behalf of the official opposition, congratulate you for the work that you've done. We certainly respect your numbers. We believe in your report. This has been an excruciating process for a number of people, and you brought clarity to that. On behalf of the official opposition, I'd like to apologize for the questioning by the government this morning that did question your integrity and your professionalism. It was wrong.

**Mr. Bob Delaney:** Chair, on a point of order: Once again, the opposition is trying to impute motive with a baseless statement that is, frankly, forbidden by the standing orders.

**The Vice-Chair (Mr. Phil McNeely):** I think it was out of order, but continue.

**Ms. Lisa MacLeod:** Thanks very much. I'll get to my questioning, and my other colleagues from the Ontario PC Party will have some questions as well.

I'd like to talk about the \$513 million that we talked about earlier this morning with the relocation to Napanee. That obviously was brought up by myself and others in question period today, and I think it's really important that it be known that that decision to relocate in that specific community had increased the cost of the cancellation to \$513 million. From what we understand, the majority of the \$513 million quoted for relocation costs is dependent on a series of variables. We know, and I think any good economist would agree, that variable costs will just increase beyond original expectations over time—certainly with this government; I think they've demonstrated that.

I'm wondering if you could, in your professional opinion, provide us with some clarity over whether or not it's possible, over the period of 20 years from now, that the cost of actually relocating to Napanee will again increase, ultimately inflating the original estimate of \$1.1 billion which is quoted in the report? In other words, given that there is some uncertainty with the variables, is it possible that that number for relocating to Napanee could increase over time?

**Ms. Bonnie Lysyk:** Thank you. Basically, this calculation was done at the point in time around now, using a discount rate and information on in-service dates. Could this change? This could change upward. Depending on the interest rates, it could change slightly downward. We're more apt to think that the costs here—it's possible that they may even be higher from the perspective of the tolls. There are a lot of unknowns around the tolls and

around that section of the contract. When we were doing the audit, my team raised the issue of the tolls with the OPA, and that began a discussion process that led to, I think, providing us with information that sort of said that the cap would be \$140 million. So there are some unknowns around that.

At this point, though, I'd have to say that this is our best estimate of what the cost will be.

**Ms. Lisa MacLeod:** Sure. But you would agree that because of the variables, this price could increase.

**Ms. Bonnie Lysyk:** I guess there are some unknowns in here, and there is that possibility.

**Ms. Lisa MacLeod:** Okay. Thank you very much.

I want to go back to this Napanee issue, because I think it's really significant for taxpayers and ratepayers to understand that by moving outside of the GTA, that has increased the cost, as you say, by \$513 million, with the possibility of extending it, even a little bit. Is it your opinion that Napanee, of all of the other choices, was not the most economical option?

**Ms. Bonnie Lysyk:** I'd have to say we don't have and we didn't assess the actual costs of all the other items that were being considered at the time they were negotiating, so I wouldn't be in a position to provide you with that answer.

**Ms. Lisa MacLeod:** During your research and during the audit, did you or any of your staff come across documentation that explains why Napanee was chosen over the other areas, particularly in the GTA or in south-western Ontario?

**Ms. Bonnie Lysyk:** We know that during discussions between the OPA and TransCanada Energy, they were looking at different plant locations, so there were generalities around each of those plant locations that were being considered. As to why Napanee was chosen, the information we have is that OPA was directed to choose Napanee at the end of the day.

**Ms. Lisa MacLeod:** And directed by—

**Ms. Bonnie Lysyk:** Directed by the Minister of Energy.

**Ms. Lisa MacLeod:** By the Minister of Energy. At that point in time—and I think you stated earlier today that the OPA paid about \$210 million for the turbines on December 14, 2012. Is that correct?

**Ms. Bonnie Lysyk:** That's correct.

**Ms. Lisa MacLeod:** As a key player in the negotiation process, would this information have been made available, according to your research, to either the Minister of Energy or the Premier of Ontario, or that office?

**Ms. Bonnie Lysyk:** I guess we can't say what information they were aware of. Was it available? The information was available.

**Ms. Lisa MacLeod:** So yes, the information was available.

During your process in terms of your audit, were you provided with any documentation that would suggest there was notification for a variety of partners and players within the system?

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**Ms. Bonnie Lysyk:** No.



**Ms. Lisa MacLeod:** No?

**Ms. Bonnie Lysyk:** No.

**Ms. Lisa MacLeod:** Was anything in your research, in your audit and in your study made available to you that indicates the OPA's misgivings about the decision to go to Napanee?

**Ms. Bonnie Lysyk:** On page 17 of the report, there is a direct quote there that indicates that: "The OPA did not think that Napanee was the optimal location because it would result in higher costs to deliver gas from the Sarnia area to Napanee and to transmit the electricity to the southwest GTA, where the power is needed."

**Ms. Lisa MacLeod:** Right. I appreciate you reading that into the record. I guess my follow-up is this: Given that it is now in Napanee, and you indicate in your report that some ratepayers are going to see an increase of up to 50% as a result of the toll increases, can you explain the geographic location in which this increase will take place?

**Ms. Bonnie Lysyk:** Okay. The pipeline goes from Sarnia to Parkway to Quebec, I guess. There is a small piece of the pipeline around Parkway that is the pipeline section that is mentioned in the agreement between the OPA and TransCanada Energy, and that's the section that requires a capacity investment.

**Ms. Lisa MacLeod:** And it is those ratepayers who are going to be seeing an additional charge as a result of this decision?

**Ms. Bonnie Lysyk:** In terms of the cost, it would be Ontario ratepayers. I can't speak to how that cost will be allocated along all of TCPL's lines or how they will allocate it on tolls so that the impact would be spread between, let's say, Union Gas and TCPL.

**Ms. Lisa MacLeod:** I have one final question, and I know my colleague Mr. Fedeli will want to ask you—throughout this process, we obviously have an OPP investigation ongoing; the anti-rackets squad is looking into this. The Information and Privacy Commissioner has indicated that her work had been obstructed, or that there were obstacles placed in her way. There were emails pertaining to what may or may not have occurred in a conversation with our very own Speaker.

We have had to deal with being told that there weren't documents, and then getting document dumps. We feel, obviously, that over the past two years, while we tried to get the information to gain the true cost and to understand when Premier McGuinty and Premier Wynne would have known about these true costs, there have been many obstacles put in our way. I would like to ask you this, with the greatest of respect: I'm wondering if, in any instance during this process of auditing or writing your report, you were disrupted at all by any missing or destroyed documentation?

**Ms. Bonnie Lysyk:** No.

**Ms. Lisa MacLeod:** Okay. Thank you. Vic?

**The Chair (Mr. Shafiq Qaadri):** Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, and welcome back this afternoon. I basically have three questions for you today.

Number one: Auditor, how much power will the taxpayers of Ontario receive? How much power is generated from this \$1.1 billion that has been spent?

**Ms. Bonnie Lysyk:** You're talking about the Napanee plant? The Napanee plant, I believe, is a 900-megawatt plant. I think the intent—

**Mr. Victor Fedeli:** That's a new contract?

**Ms. Bonnie Lysyk:** That is the new contract.

**Mr. Victor Fedeli:** I'm talking about the \$1.1 billion that was spent to cancel. How much power will we generate from that cancellation fee?

**Ms. Bonnie Lysyk:** How much power—

**Mr. Victor Fedeli:** It's a rhetorical question. You know that the answer is zero.

**Ms. Bonnie Lysyk:** Yes, I know. I guess this is cost that is embedded in the cost to build Napanee.

**Mr. Victor Fedeli:** So \$1.1 billion is the cancellation cost and the relocation cost.

**Ms. Bonnie Lysyk:** And then I believe it's important to take into account the estimated future savings, which really brings it down to \$675 million.

**Mr. Victor Fedeli:** Precisely. And how much power do we get for that \$675 million?

**Ms. Bonnie Lysyk:** Well, these costs, again, would be added into the Napanee plant, so it would be an additional charge to the Napanee plant.

**Mr. Victor Fedeli:** Okay. Do we get any power from the \$675 million? You can say it; it's okay.

**Ms. Bonnie Lysyk:** I guessed where we were going on this. The Napanee plant has a cost that is higher than the Oakville plant, and therefore, you're having to pay this.

**Mr. Victor Fedeli:** I think it's safe to assume that the \$675 million for cancellation and relocation—we don't get any power from that. The power will come from the future 900-megawatt plant that will be paid for separately and built separately as well.

**Ms. Bonnie Lysyk:** The Napanee plant will be the plant that these costs are allocated toward.

**Mr. Victor Fedeli:** Thank you. I handed out a document—

**Mr. John Yakabuski:** It gets worse?

**Mr. Victor Fedeli:** Yes, it is pretty bad, by the way—all that money, John, and we get no power for it.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, at least don't heckle your own member.

**Mr. Victor Fedeli:** I am handing out a document; the Clerk has handed out a document. For the record and for the members, I want it noted that this document came from the May 14 OPA non-confidential document file. I want that noted, because there is a number in this.

It says, down at the bottom—it has to do with the HH NRR, the Halton Hills net revenue requirement. At the moment, we are paying Halton Hills, also owned by TransCanada, X amount—it doesn't show the amount here. We're paying them X amount for their net revenue requirement.

I can say that on the record, we were given somewhere around—when I asked the OPA—not specifically about



this one—what is the average NRR that we're paying, it's somewhere around \$11,000, \$12,000, \$13,000—if we all remember correctly my asking that, and it is on the record somewhere. So we know the quantum that we're talking about.

This is from Michael Killeavy of the Ontario Power Authority, and it's to Deborah Langelaan. This is about two weeks before the MOU was signed.

He says, "Deb, I did an analysis of the proposal to increase HH NRR...." So they have a proposal to increase how much they were going to pay TransCanada at their Halton Hills facility; nothing to do with the TransCanada facility. "Can you please review it ... to see if you agree with the analysis?"

"I have made a simplifying assumption of indexing ... cash flows," and he goes on and on and on.

She answers back: "Michael: The way I read paragraph 12 of the OGS settlement proposal"—that settlement proposal is the Oakville generating station. She is saying that the way she reads paragraph 12 of the Oakville generating station settlement proposal is that Halton Hills, an unrelated gas plant also owned by TransCanada, would have their NRR increased "commencing Jan. 1/16, by the entire OGS NRR of \$17,277 adjusted for CPI.... Is that the way you interpret it?"

At one point in time, somebody was negotiating to give TransCanada, by my calculations, about a \$250-million kiss.

I have absolutely no idea of the answer to this. This is only one page out of the 110,000 non-confidential documents that we have. There's only one page. Did this go through? We saw 10 side deals in Mississauga. Is this a side deal?

**Ms. Bonnie Lysyk:** On page 16 of the report, under section 4.2.4, it mentions, "On September 12, 2012 (the date that the OPA and TCE were required to submit settlement offers to an arbitrator), the parties agreed to one more attempt to agree on another plant."

There were a number of things that TransCanada Energy and the Ontario Power Authority were discussing, leading up to the contract for Napanee being put together—

**Mr. Victor Fedeli:** But this isn't another plant. This is already a plant that has been running in Halton Hills.

**Ms. Bonnie Lysyk:** As far as we know on this one, the NRR did not change.

**Mr. Victor Fedeli:** You don't believe the NRR changed. Is there any way to verify that? I'll be honest: Our trail ran cold, but we know that, obviously, they were negotiating.

**Ms. Bonnie Lysyk:** I would think you'd be in a position to confirm it with OPA, because they do manage the relationship, so they can confirm whether this went or did not go through. In terms of our understanding, the NRR has not changed at this point.

**Mr. Victor Fedeli:** At Halton? Well, it's not supposed to change until January 2016.

**Ms. Bonnie Lysyk:** For the period—I think you have here for the period. So it would have changed earlier.

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**Mr. Victor Fedeli:** It would have been adjusted for CPI anyway, wouldn't it?

**Ms. Bonnie Lysyk:** They usually all have adjustments for CPI in these types of agreements, but I would say—

**Mr. Victor Fedeli:** That's not the part I'm concerned with, then, the 2013-16; it's the 2016.

**Ms. Bonnie Lysyk:** All I can say at this point in time is we understand that this has not increased, that this did not go through, but again, if the committee as a whole wants a confirmation of it, my suggestion is that's a good question for Ontario Power Authority.

**Mr. Victor Fedeli:** Or we may be asking you to finalize that, if there is indeed a motion, because out of 110,000 pages, there's only one that—and I'll be perfectly blunt: I think it slipped through the OPA that we got this one. I'll be very firm in saying that, because they would never allow numbers like that to be out in the public. It's about \$250 million, according to my math, so I'll be very eager. I'm not being accusatory at all. I just don't—the trail went cold.

**Ms. Bonnie Lysyk:** I'm just saying one more time, we have confirmed that it hasn't gone through or that they don't plan to make it go through at this point in time, so—

**Mr. Victor Fedeli:** Is it in arbitration right now? Is it being studied? Is it still being considered, and at the moment it's not planned to?

**Ms. Bonnie Lysyk:** Those questions are beyond—

**Mr. Victor Fedeli:** Okay. And the only reason I push, Auditor, is because we found others—certainly not you by any stretch of the imagination, but others who have sat in that chair—if we don't ask and drill down specifically, they tell us one thing, but even they know that that's not the full truth, that there's really a real answer back there. If they give us a couple of wiggle words—and I'm not in any way suggesting this is coming from you; I'm talking about others—they give us a wiggle word that says, "Well, that's not in the plans today." That doesn't answer the question from them, because that also could mean, "But we're planning to do it tomorrow, and we're just not going to tell you about it." So that's what we've learned from them.

**Ms. Bonnie Lysyk:** Yes. All I can say is, at this point in time, our understanding is that this is not going to go through, but we have not done a full-scale review of the contract.

**Mr. Victor Fedeli:** Okay. So I'm going to take your advice and talk to the OPA about that when they're back here.

In the remaining two minutes, then, I just want to ask you a little bit more about page 8 and the \$140 million. So the way we see it, TransCanada was driving the bus here because they were told, number one, "We'll make you whole." The OPA was told by the government, by the Premier's office, "You're to make TransCanada whole." That set this whole sad billion dollars in motion.

But then, for whatever reason—we'll get people back here again in the near future, I'm sure—the energy



minister made the decision to move to Napanee. But in your own document, it says here on page 8, the fourth line:

“There is currently no pipeline path that would be a practical alternative to this route. This section does not currently have the capacity to transport the amount of gas needed to service the Napanee plant. Accordingly ... through increased toll charges, which get passed on to electricity ratepayers,” that new pipe will have to be installed.

So, basically, they went to Napanee knowing that the capacity wasn't there. Incidentally, had it stayed in the Oakville area, TransCanada would have had to buy gas from one of their competitors, Enbridge. By going to Napanee specifically, they don't have to buy gas any further from their competitor; they get to buy it from their sister company, TransCanada, who supply the gas. That's an awful big quid pro quo, to give the company a gift, moving to Napanee when the pipeline there did not, in your own words here, “have the capacity to transport.” As a result, you feel the price could go up \$140 million because there is an application going in to the National Energy Board to increase tolls by 50%. Am I pretty close on all of this?

**Ms. Bonnie Lysyk:** On page 21, in the left-hand column, we explain the circumstances leading up to the \$140 million.

**The Chair (Mr. Shafiq Qadri):** Thank you, Mr. Fedeli. Mr. Tabuns, the floor passes to you.

**Mr. Peter Tabuns:** Ms. Lysyk, could you just finish your statement there about the circumstances on the gas supply?

**Ms. Bonnie Lysyk:** Yes. On page 21, in the first column, “Potential increase in gas delivery and management costs,” we're explaining sort of the context of what led us to the \$140-million quantification. So in September 2013, the gas distributors agreed on a tolling framework—it's a draft document—with TCPL to recover the cost of its additional investment requirements. So under this framework, the tolls could increase up to 50% in the first three years.

What we did is, to be conservative in terms of erring on the upside, we've got the 50% in this because it only relates to three years. Beyond three years, we don't know. Again, there's a negotiation process.

In terms of the path, that is the only path right now that's available, because of the type of flow into the Napanee plant that's required. If they change the path, which they might do in the future, that's a negotiation yet between OPA and TCPL that has to take place. It's part of their gas management plan discussions.

**Mr. Peter Tabuns:** If the OPA is paying the gas delivery for gas coming through TransCanada PipeLines to a TransCanada power plant, is it fair to say that TransCanada Enterprises is double-dipping here?

**Ms. Bonnie Lysyk:** I can't comment on that comment.

**Mr. Victor Fedeli:** I think it's triple-dipping, Peter.

**Mr. Peter Tabuns:** Well, unfortunately, I'm not questioning you, Vic, but that was a good answer.

I assume that it may be fair to say that TransCanada is now making money on the gas it supplies through its lines, which it wouldn't have done with the original agreement. Is that correct?

**Ms. Bonnie Lysyk:** Under the Oakville agreement, you're correct in suggesting that TCPL would not have handled the gas going into the plant. In this case, they would be. This is a pathway that's identified at this point in time.

**Mr. Peter Tabuns:** Why did the OPA take on the gas delivery costs?

**Ms. Bonnie Lysyk:** I'd be speculating. At the end of the day, they did. I think that is a great question for the OPA. I think they didn't have that responsibility under the Oakville contract; they do under the Napanee. But they also have taken on some of that responsibility under other power plants that they've engaged with.

During the negotiation process, when they lowered the NRR calculation, they did factor some of the costs in, in lowering their NRR. They took the costs, but they were then going to be paying a lower NRR for some of those costs.

**Mr. Peter Tabuns:** Do you know at what point in the negotiations this arrangement was made?

**Ms. Bonnie Lysyk:** With respect to the gas?

**Mr. Peter Tabuns:** Yes.

**Ms. Bonnie Lysyk:** No, I don't.

**Mr. Peter Tabuns:** Okay. You said this morning that every time the government took an action, it favoured TransCanada.

**Ms. Bonnie Lysyk:** Sorry?

**Mr. Peter Tabuns:** You said this morning that every time the government took an action with regard to this file, it favoured TransCanada. Can you outline those instances?

**Ms. Bonnie Lysyk:** “It favoured”—no. What I'm saying is that, at the end of the day, TransCanada Energy, in our view, based on the information that we have here in the report—we see it having some benefit from the negotiation as we've laid out.

At the end of the day, I think we've quantified the estimated benefit to TCE of approximately \$225 million, based on the information that we've been provided by the Ontario Power Authority.

**Mr. Peter Tabuns:** But if we go back, then, when the cancellation notice was given, TCE was given pretty much all they wanted in October 2010. That would be one place where the government had a decision to make, and its decision was in favour of TransCanada, correct?

**Ms. Bonnie Lysyk:** I guess when the letter was provided to TransCanada on October 7, and when the arbitration framework was drafted, both those two documents reflect terms that appear to favour TransCanada Energy over the OPA's position on issues.

**Mr. Peter Tabuns:** And then again, when the arbitration agreement was made, two lines of defence for the public were set aside. One was the protection against recovery of profits, and the other was any defence against claim, because this plant was facing huge difficulties and



might not have gone ahead. Are those two other instances where the government made decisions that favoured TransCanada?

**Ms. Bonnie Lysyk:** I would say, in terms of the negotiations, at the end of the day, they ended up with the additional cost estimate of \$675 million because of the decisions leading up to this.

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**Mr. Peter Tabuns:** Who made those decisions? Was it the OPA or the government of Ontario?

**Ms. Bonnie Lysyk:** In terms of the addendum to the request for proposal, that would have been OPA. In terms of the letter being provided to TCE, that would have been the direction they received from the Premier's office. In terms of the selection of the plant, from what we understand, that would have been direction from the minister.

**Mr. Peter Tabuns:** Do you know if the OPA was told it had to put in the gas demand and management charges prior to the final agreement?

**Ms. Bonnie Lysyk:** No.

**Mr. Peter Tabuns:** Could the arbitration framework have been put into place between the OPA and TransCanada without cabinet approval?

**Ms. Bonnie Lysyk:** That, I think, is a question for Ontario Power Authority. I can't guess where the authority lied around that time.

**Mr. Peter Tabuns:** Did you ask any questions about that when you did this audit?

**Ms. Bonnie Lysyk:** Could you say around what again?

**Mr. Peter Tabuns:** Did you question the OPA about whether or not they had to have the government of Ontario signing off on this before they went ahead with arbitration?

**Ms. Bonnie Lysyk:** On page 16, if we go to the second column, the second paragraph: "Facing this risk of litigation, the government asked the chief executive officer (CEO) of Infrastructure Ontario in June 2011 to find alternative projects acceptable to both sides. In case this was not successful, the CEO was also asked to establish a framework for arbitrating the amount of damages to be paid to TCE."

At that point, the government was involved with having the CEO of Infrastructure Ontario enter into this process.

**Mr. Peter Tabuns:** But you can't tell me whether OPA had to come back to cabinet for approval to do an arbitration agreement?

**Ms. Bonnie Lysyk:** We don't know if there was a cabinet approval required. We know that Infrastructure Ontario had the authority to negotiate, but we don't know whether or not it required cabinet approval at the end of the day.

**Mr. Peter Tabuns:** I'll preface this question.

When your predecessor was asked about the Missis-sauga plant, he said that, effectively, we paid for two power plants and got one.

How many power plants did we pay for in this instance and how many did we wind up with?

**Ms. Bonnie Lysyk:** One and a half.

**Mr. Peter Tabuns:** Okay. The turbines going into the Napanee plant: Can you tell us about their specifications and their suitability for this plant?

**Ms. Bonnie Lysyk:** The turbines that TransCanada Energy were originally having manufactured were designed for the Oakville plant—specific qualifications and design as to what would be needed in that plant. When TransCanada Energy and OPA were negotiating the Kitchener-Waterloo option, they signed a memorandum of understanding, and at that time the Ontario Power Authority requested TransCanada Energy to have those turbines modified so that they would be able to be used in the potential plant going into Kitchener-Waterloo, which would have been a peaker plant. After that happened, there wasn't, obviously, a deal reached on Kitchener-Waterloo, but the turbine issue was still there.

The turbines that were modified for Kitchener-Waterloo will still be the turbines used in Napanee, but those turbines, because of that modification, are less efficient than if those turbines had been specifically designed for the Napanee plant.

On page 21, at the bottom, and it goes to the top of 22, we do highlight that, at the end of the day, the additional costs around those turbines, because of the modification and the efficiency impact, are about \$70 million. So \$36 million of it was for modifications, and an additional \$35 million would be incurred over the life of the contract because it requires more—there will be a higher fuel requirement associated with the modified turbines.

**Mr. Peter Tabuns:** It's useful to have that annual number, which is a lot of money. By what percentage was the efficiency of the turbines reduced?

**Ms. Bonnie Lysyk:** It's an OPA estimate, but unfortunately we don't have that percentage with us.

**Mr. Peter Tabuns:** Okay. Then we can track that down.

I assume that you've had a long history doing audit work for governments?

**Ms. Bonnie Lysyk:** Yes.

**Mr. Peter Tabuns:** Have you seen \$1 billion blown out like this in your previous assignments?

**Ms. Bonnie Lysyk:** Every audit's different. Some involve money, some involve issues beyond money, and there's a significant impact from those as well. I would say this is a lot of money, and I'd leave it at that.

**Mr. Peter Tabuns:** Would you say it's one of the larger or largest ones you've seen in your career?

**Ms. Bonnie Lysyk:** Yes, I would say that in terms of the information that we have and the report on the additional costs above and beyond what appears to have been needed for this process, it's pretty high.

**Mr. Peter Tabuns:** You've worked previously for Manitoba Hydro?

**Ms. Bonnie Lysyk:** Correct.

**Mr. Peter Tabuns:** Did they ever have blowouts at this level in terms of investment for power?

**Ms. Bonnie Lysyk:** It was many years ago. I can't remember what different transactions were. I was privy to some but not to all.



**Mr. Peter Tabuns:** There were none that were big enough that made it onto the public radar like this?

**Ms. Bonnie Lysyk:** I can't recall any big bills in Manitoba that ended up costing ratepayers significant dollars.

**Mr. Peter Tabuns:** Okay. You've looked at the siting process. You've looked at the difficulties with siting this plant in Oakville. Was this a good process for Ontario to engage in?

**Ms. Bonnie Lysyk:** Again, I can't comment on whether the process was good or bad. I guess I can say that, in our view, when there was strong opposition to the plant, it did make us question why that would lead into the signing of a contract.

**Mr. Peter Tabuns:** Was it a risky process for the people of Ontario?

**Ms. Bonnie Lysyk:** Risky? Risky in what regard?

**Mr. Peter Tabuns:** In that it was unpredictable as to what the outcome would be.

**Ms. Bonnie Lysyk:** Well, I think that any time you sign a contract, you take on some risk. I think the fact that there was a community that had expressed considerable discontent around this is a risk factor.

**Mr. Peter Tabuns:** Did the contract with TransCanada intend to transfer risk to TransCanada or keep it with the public?

**Ms. Bonnie Lysyk:** Are you speaking to Oakville or—

**Mr. Peter Tabuns:** Yes.

**Ms. Bonnie Lysyk:** Oakville? I guess at the end of day, I would comment that the Oakville contract was tendered and the lowest bidder was chosen. So from that perspective, we didn't identify any concerns around that. I think at the end of the day, when you look at the whole transaction in terms of Oakville to Napanee, there is more risk associated with taking on gas distribution costs for the Napanee plant. So there is some risk that we see that was transferred from TransCanada Energy over to the Ontario Power Authority because of that transaction.

**Mr. Peter Tabuns:** When Mr. Ben Chin was testifying here recently, he said one of the beauties of these private contracts is that the risks get transferred to the private contractor, and the public is insulated. Were we insulated?

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**Ms. Bonnie Lysyk:** Were we insulated? When a contract is written—and it was written for Oakville; there were provisions in the contract, both the force majeure, discriminatory action and the requirement for TransCanada Energy to obtain the necessary permits and approvals. One would assume that those were protections for the Ontario Power Authority that would then protect ratepayers, because there were appropriate protections built into the contract.

**Mr. Peter Tabuns:** So, in fact, risk was supposed to be transferred to the private company. The contracts were structured to put the risk on their shoulders. But in the end, the government of Ontario took back all the risk.

**Ms. Bonnie Lysyk:** The contracts put the requirement on TransCanada Energy to obtain the necessary approvals before they could start construction. They did have the risk, at the time the contract was signed, to ensure that they obtained the necessary approvals before the plant could be built.

**Mr. Peter Tabuns:** Do you know how they convinced the Premier of the day to take back that risk and put it on our shoulders?

**Ms. Bonnie Lysyk:** No, I can't comment on that.

**Mr. Peter Tabuns:** All right. If Napanee was a location that the OPA didn't want to use because it was too far from the southwest GTA, what was their preference?

**Ms. Bonnie Lysyk:** Their preference was the Kitchener-Waterloo-Cambridge option.

**Mr. Peter Tabuns:** Which would have been significantly less costly all around, I gather.

**Ms. Bonnie Lysyk:** Less costly, and it was suggested, I think, to be a peaker plant, and the megawatts that would be produced from the plant were less as well.

**Mr. Peter Tabuns:** Was there any community consultation with the people of Napanee before this plant was sited?

**Ms. Bonnie Lysyk:** I guess we know that—well, what we were told is that there was already an environment that was accepting of having a plant in it.

*Interjection.*

**Ms. Bonnie Lysyk:** I've just been reminded that the audit team met with the officials from Napanee to confirm that they were accepting of having a plant built in their community, and they were.

**Mr. Peter Tabuns:** Okay. How much time do I have left?

**The Chair (Mr. Shafiq Qaadri):** One and a half minutes.

**Mr. Peter Tabuns:** I think I'll pass on the one and a half minutes.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Welcome back, Auditor. I'd like to talk to you a little bit about the negotiation process.

In your report, you say that the government appeared to tie its own hands by committing to keep TransCanada whole. We've learned through testimony at the committee that it was actually TransCanada that used that term and not staff in the former Premier's office.

When we asked Chris Breen, who represented TransCanada Energy, about the term "made whole," he responded, "This was put forward by TransCanada.... 'Our idea of being kept whole is just that if you don't want us to build there—we're a contractor. Just send us to another site. We'll build on the other site.'"

When we asked staff from the former Premier's office whether they agreed to keep TransCanada whole, they said no.

Did you interview any members from the former Premier's staff as part of your report?

**Ms. Bonnie Lysyk:** No. There was no interviewing performed by the auditors—our office—of the staff of



the Premier's office. The information that we have around this is from discussions at the OPA.

**Mr. Bob Delaney:** Thank you. Chris Breen from TCE and these former staff also testified that they did not negotiate directly about the cancellation.

Chris Breen told us, "Negotiating? I think what they were—certainly not negotiating in the sense of fine-detail dollars and cents. I think what they were saying to us was quite clearly that this plant is not likely to move ahead on the site that you've chosen."

Sean Mullin, one of the Premier's former staff, testified, "We were not authorized to, we had no intention to, and we did not engage in" any negotiation.

OPA Chair Jim Hinds testified, "I did not see evidence of close engagement between the Premier's office staff ... and TransCanada."

"My take-away from that, as Chair of the OPA board, was probably that TransCanada was playing a divide-and-conquer strategy at that ... point in time: If they heard something from the OPA that they didn't like, that they were probably pretending or bluffing a bit."

The lessons to be learned indicate why the Premier announced on Tuesday that she has asked the secretary of cabinet to create new procedures limiting political staff involvement in commercial third party transactions.

Based on your report and your findings, what would you think of the Premier's decision on limiting staff participation?

**Ms. Bonnie Lysyk:** In this report, obviously, you see that we didn't put recommendations. But if we had put a recommendation forward, I think that is a good one.

**Mr. Bob Delaney:** So it would be a step forward, in terms of lessons learned from this particular experience, for the Premier's staff to implement new procedures making very clear what your roles are and what your roles are not.

**Ms. Bonnie Lysyk:** I think so. I think what we saw is that it created a lot of confusion in Ontario Power Authority. Yes, it would add clarity.

**Mr. Bob Delaney:** Okay. The prevailing advice from experts when the decision was made not to move forward with the Oakville plant was that it was much better to renegotiate on an alternative project than to end up in litigation. The consensus was that the costs would be much, much greater to litigate than to arrive at a settlement, which is why the OPA and the province worked as hard as they did to negotiate in good faith on an alternative project.

These sentiments were expressed by multiple witnesses who sat where you are at the committee. Halyna Perun, who is the director of legal services at the Ministry of Energy, testified that, had the decision been made to cancel the contract, as opposed to renegotiating, "TransCanada would have been in a position to sue for breach of contract because there was no right to terminate in this particular instance."

David Lindsay, the former Deputy Minister of Energy, stated, "Paying costs and getting no electricity would not be a very good business decision. So try to avoid litigation

was the strategy and get maximum electrons for minimum cost was what we in the OPA were trying to do."

John Kelly from the Attorney General's office testified to us, "I'm fairly satisfied there would have been litigation," referring to if the government and the OPA hadn't negotiated with TCE on an alternative plant.

Mr. Kelly also said—

**Mr. John Yakabuski:** Point of order.

**Mr. Bob Delaney:** It's not a point of order.

**Mr. John Yakabuski:** Point of order, Chair.

**Mr. Bob Delaney:** Mr. Kelly also said—

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

Yes, Mr. Yakabuski?

**Mr. John Yakabuski:** Mr. Delaney seems to want to rehash a lot of testimony from other people, out of context. If he is challenging the findings of the auditor in her report, why doesn't he just state that? He keeps coming back to contradictory statements—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. I'm sure he'll consider that advice.

**Mr. Bob Delaney:** Thank you, Chair.

Going back to Mr. Kelly from the Attorney General's office, he said, "In my experience, after 40 years of litigating, if you can avoid litigation, you should. It's a process that's fraught with risk."

Under these circumstances, perhaps the only way for the province to be certain to avoid litigation was either to reach a settlement on damages or to renegotiate for a new plant with TCE, to find a new project. Would that be congruent with your findings?

**Ms. Bonnie Lysyk:** I think I'm more basic when I say that if somebody has, under their contract, a requirement to obtain permits and they don't fulfill it—when we looked at this, we would think that that in itself is a reason to say, before we do anything and make a decision to commit, in a letter, additional funds towards, let's say in this case, TransCanada Energy—we would think about what our actions should be so that we minimize it, before we put our commitment in a letter.

I've heard that people maybe weren't sure what was in the contract, and what they could have relied on or what they didn't rely on. But at the end of the day, who didn't meet the initial terms of the contract? That was TransCanada Energy, because they weren't able to get the permits. So whatever happened after that was a decision as to—you're right—whether they decided to go and take legal action or whether they decided to do a settlement.

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All we've done here is, at the end of the day, we looked at those decisions and we outlined what happened and we've quantified the impact of those decisions. At the end of the day, they chose a course of action, and I'm not disputing or questioning—I don't live in their shoes. What we have in this report is an estimate of the impact of the decisions that took place from the point of signing that contract to the Napanee contract.

**Mr. Bob Delaney:** Right. And your report does acknowledge that there would be quite a bit of uncertainty



around where a court might land on these particular questions?

**Ms. Bonnie Lysyk:** I think actions that people took impacted their options, and that's kind of what we laid out.

**Mr. Bob Delaney:** All right. To come back to the report, your estimate for the relocation cost is \$675 million, and you also state there could be an increase of as much as \$140 million in tolling related to the delivery of gas. I've heard others combine the two figures and allege that the total cost is \$815 million, which would make the cost of cancelling both Mississauga and Oakville \$1.1 billion, but that's not what your report says. Why didn't you include the \$140 million in that final cost?

**Ms. Bonnie Lysyk:** I want to clarify, too, on the question you just asked me: The legal counsel for OPA said that if we had let the contract run its course and TransCanada was unable to complete the plant for several years because of permitting issues etc., we could have terminated the contract because of the force majeure clause. That's an important one to keep in mind.

In terms of the settlement and why we didn't add the \$140 million, we didn't add the \$140 million in because there is a lot of uncertainty around that figure. It could be significantly higher; it could be within the range of zero to \$140 million. We felt more comfortable that \$675 million is our best estimate, but we thought this item of tolls hadn't been brought to the attention of the members of the assembly, and that's why we included it in here, to bring to your attention that it's a factor to consider on a go-forward basis.

**Mr. Bob Delaney:** So, then, it would be accurate to call the \$140 million an estimate, but you can't say whether it's certain at this time?

**Ms. Bonnie Lysyk:** I think we can say, based on the documentation that we received from OPA that is from TransCanada Energy, that this is a decent estimate in terms of the tolls, but not one that we wanted to add to the \$675 million, because the items in the \$675 million are slightly more definitive.

**Mr. Bob Delaney:** Yes. That's correct, because any increase in tolls would require the approval of the National Energy Board.

**Ms. Bonnie Lysyk:** And we have that in our report as well.

**Mr. Bob Delaney:** Right. Okay. Hence the reason you kept those two totals separate.

**Ms. Bonnie Lysyk:** Correct.

**Mr. Bob Delaney:** Okay. So that for the Oakville plant, the correct figure is \$675 million?

**Ms. Bonnie Lysyk:** For the cancellation of the Oakville plant—

**Mr. Bob Delaney:** Exactly. That's what I'm asking.

**Ms. Bonnie Lysyk:** —and the Napanee plant being started, \$675 million, yes.

**Mr. Bob Delaney:** Okay. Thank you.

Minister Chiarelli recently announced a series of measures that will decrease energy rates. For example, the renegotiation of the Samsung agreement takes \$3.7

billion off the rate base, and another \$1.9 billion has been taken off the rate base from the removal of the domestic content provisions. So adding those two together, that \$5.6 billion, will, on average, push energy prices down.

When you include the \$675 million into that combined pool, over the course of 20 years, will it have a material effect on power rates?

**Ms. Bonnie Lysyk:** I would say just the fact that it's \$675 million, it would have some impact, yes.

**Mr. Bob Delaney:** Right. Earlier this morning, you said that, in your opinion, those costs would be averaged more or less in a linear fashion. So we would expect that that would be about \$32 million or so per year on the power rates, right?

**Ms. Bonnie Lysyk:** I don't know how you've gotten your calculation, so I can't comment. It sounds like it could be—

**Mr. Bob Delaney:** Yes, \$675 million divided by 20.

**Ms. Bonnie Lysyk:** Yes, it sounds like it could be— but there are probably more aspects to this. Everything's always more complicated than it looks, right?

**Mr. Bob Delaney:** Right. I think what we're trying to do now here is to just get an approximate idea of a good ballpark estimate—

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski.

**Mr. Bob Delaney:** I don't interrupt you when you're questioning. I'd actually like you to behave yourself when I'm questioning, okay?

*Interjection.*

**The Chair (Mr. Shafiq Qaadri):** Gentlemen.

*Interjection.*

**Mr. Bob Delaney:** Oh, behave yourself.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski.

**Mr. Bob Delaney:** Okay. I'd like to talk to you a little bit about some of the steps that the Premier and the government have taken to be open and transparent on the file.

Immediately after being elected, the Premier struck this committee, actually, so that we could review all of the facts regarding the two relocations. She ordered a full disclosure of documents, and on February 7, she wrote to your office, to your predecessor, asking your office to undertake a review and, of course, to write this report.

When you were asked about all the steps at your press conference and at your meeting with Premier Wynne, you made a comment at the time that it was good to hear that they're taking the report seriously and they're taking some actions and changing, maybe, the way things are going to be done in the future so that a situation like this doesn't evolve.

Would you like to elaborate on the steps that have been taken by the province to be open and transparent and to ensure that we get the siting decisions right the first time?

**Ms. Bonnie Lysyk:** I think that's public record already, in terms of the Premier's public announcement. But my understanding of the public announcement is that there will be additional steps taken to discuss issues with



the community around the siting of plants, and I think that stems from an initiative that was undertaken to explore what needs to be done to improve the siting process.

I think the second thing is the political staff's interfacing with the crown's. The third—I can't remember what the third is. I'm sorry, but you'd have to remind me of what the third one is, if there is a third one.

**Mr. Bob Delaney:** No, that's fine.

**Ms. Bonnie Lysyk:** I think I'd like to say too that, yes, I had a meeting the day before this was tabled. I was given an indication of what steps had been taken and what steps would be taken. I think what was communicated was positive, so I'm not going to say not.

**Mr. Bob Delaney:** Thank you. With regard to the siting of the Oakville plant, which was chosen by the proponent, TransCanada, on the Ford lands in Oakville, based upon zoning made by the town of Oakville, you note in your report that the OPA had told prospective proponents not to be concerned about municipal opposition when they chose their site to build the plant.

You note that even though the town of Oakville had already taken measures to try to stop the project from being located on that site, the OPA issued an addendum to its requests for proposals, stating it would not consider any municipal opposition when evaluating these proposals.

In other words, TransCanada was allowed by the OPA to choose a site, despite the fact that Oakville had clearly stated it was an unwilling host.

What we've learned from the experiences in Oakville and Mississauga is that there were serious flaws in the siting process for that particular energy infrastructure. Actually, frankly, I'm very happy to see that we're making important changes.

On Tuesday, the Minister of Energy announced that our government is implementing the 18 recommendations of a recent IESO and OPA report on the best practices for energy siting, moving forward. These are changes, just to encapsulate them very quickly, that will "improve municipal engagement and public consultation, and ensure ... predictability for the energy sector."

What did you think of these particular steps—

**Mr. John Yakabuski:** Point of order, Chair: Could I ask what that has to do with the auditor's report, those questions over there? She's here to talk about her report and recommendations, and the scandal that we've been dealing with.

**The Chair (Mr. Shafiq Qaadri):** We thank you for the reminder, Mr. Yakabuski.

Mr. Delaney, continue.

**Mr. Bob Delaney:** Thank you, Chair.

With regard to the conclusions in your report and some of the decisions arising from it from the government, what did you think of those particular steps?

**Ms. Bonnie Lysyk:** I think those are positive steps. I think one other area—and we had some discussion on it—this wasn't a report for recommendations.

The other thing to keep in mind is that the Oakville plant, when it was initially contracted for—there was a requirement for 900 megawatts of power. Seven, eight months later, there wasn't a requirement for power.

Another area that, down the road, we think, as an office, there would be a benefit to look at is the power planning process and why, within months, does a power plan change so that you would have—if Oakville had gone ahead, OPA would have been paying for power that wasn't needed.

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**Mr. Bob Delaney:** Okay. Chair, how am I doing on time?

**The Chair (Mr. Shafiq Qaadri):** Three minutes.

**Mr. Bob Delaney:** Okay. During the summer, we heard suggestions from some quarters that the province should release a copy of your draft report, somehow alleging that the province had a copy at that time. Did anyone have a copy of a report from you in the summer?

**Ms. Bonnie Lysyk:** In the summer?

*Interjection.*

**Ms. Bonnie Lysyk:** The first draft—again, this was before I stepped into the office. On August 23, the first draft went to the Ontario Power Authority only.

**Mr. Bob Delaney:** Okay. In other words, no one in the government had a copy of your report at that time.

*Interjection.*

**Ms. Bonnie Lysyk:** The process in the office is that when there is an audit, it is cleared with the direct subject of the audit. The only group that had a copy of the audit draft report was the Ontario Power Authority.

**Mr. Bob Delaney:** Thank you. All right. There's a provision in the Auditor General Act that prohibits the disclosure of your office's working papers.

**Ms. Bonnie Lysyk:** That's correct.

**Mr. Bob Delaney:** Section 19 says: "Audit working papers of the Office of the Auditor General shall not be laid before the assembly or any committee of the assembly."

Could you comment, just in the last few minutes, on why it's important to protect the integrity of these working papers?

**Ms. Bonnie Lysyk:** It is important. Any time we are working with any entity in the public sector and we are exchanging information, it's important that that information be confidential. We request it, and we support the fact that that information would be kept confidential. If it wasn't, then it would be more difficult for us to do audits. People would not feel comfortable talking with us.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. Bonnie Lysyk:** False information could go out because, at the end of the day, these are drafts, and there are a lot of changes to drafts, as everyone around the table is probably aware.

**Mr. Bob Delaney:** No, I understand. In July, in the middle of the by-election, our opponents opposite made an allegation that the government actually had a draft copy of your report. Could you please confirm that on July 25, your report was still incomplete and that investi-



gations and interviews were ongoing and nobody had a copy of your report?

**Ms. Bonnie Lysyk:** That's correct. In July, the work was still ongoing and there wasn't a draft report to provide to anybody.

**Mr. Bob Delaney:** Okay. Thank you, Chair. I'm done.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the PC side: Mr. Fedeli.

**Mr. Victor Fedeli:** I'm passing to Mr. Yakabuski.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski.

**Mr. John Yakabuski:** We'll see if Mr. Delaney keeps his word about not interrupting. I'm sure we can trust him on that.

Thank you again, Auditor, for joining us this afternoon.

You did mention that the auditor's act, or whatever we call it, prohibits someone from disclosing that information. You're probably aware, too, then of the fact that the Archives and Recordkeeping Act actually prohibits people from deleting emails when they work in the Premier's office or the minister's office or such things as that. So, apparently, just because an act prohibits something, it doesn't mean that people don't actually do it. It seems to be the practice in this government. I just wanted to make sure we had that on the record.

We're going to go back a little bit. I am saddened by the line of questioning, and I can see that the members opposite, under directions from the corner office on the second floor, I'm sure, were trying—doing everything they can to get you to agree with something that they're doing as being—

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, you're really skirting the line on attribution, imputing motives, and all the rest of it. I'd just invite you to please ask your questions—

**Mr. John Yakabuski:** Well, I'll do my best. But it is clear that, talking about energy plans and steps that have been taken, that have nothing to do with your report whatsoever, he was fishing desperately to get you to say something positive, which I think he succeeded at the end. But they have nothing to do with the fact about this power plant, why it was cancelled and how much it cost. And the cost is—auditors: That's what they deal with; they deal with money.

We do know that on December 14, 2012, TransCanada was paid the \$210 million for those turbines. That was confirmed today and also confirmed in the House today. It would be almost inconceivable, given the gravity of this investigation—not necessarily your audit, because you hadn't been asked to do a report on Oakville at that time. But given the work that the committee is doing and has been doing, it would be almost inconceivable to believe that the people who are going to be politically affected by this would not have been informed that, "Hey, TransCanada has been written the cheque to pay for the turbines."

We had the Premier here in April—she would have been in the middle chair—who said that to her knowledge, she had no knowledge of any costs beyond \$40

million and, in fact, they may be as low as \$33 million. What's your comment on that?

**Ms. Bonnie Lysyk:** You know, I can't comment, because I don't know what she was aware of.

**Mr. John Yakabuski:** The Ontario Power Authority knew for certain, because they paid for those turbines by that date, by December 14, 2012. The OPA had paid TransCanada for the turbines by December 14, 2012?

**Ms. Bonnie Lysyk:** That's correct.

**Mr. John Yakabuski:** Okay. I think we can leave the speculation as to whether the Premier knew for the people out in Ontario. I'm satisfied that the Premier knew.

So the additional gas tolls going to TransCanada for the upgrades to the pipeline because of the Napanee relocation—let me get this straight. I just want to make sure that the people have this straight. So the Liberal government cancelled a plant in Oakville where, according to their reasoning, it was needed to provide power to the southwest GTA. They cancelled the plant in Oakville, relocating that plant to Napanee, so that they would have to build transmission and delivery for gas to go from Sarnia to Napanee, and then further build additional hydro transmission lines to bring that very same power that they were now producing in Napanee back to the southwestern GTA. This was essentially what they did?

**Ms. Bonnie Lysyk:** That's correct.

**Mr. John Yakabuski:** That's almost insane, isn't it? I know you're not a psychologist; you're an auditor—or a psychiatrist.

But if you're supposed to be the people who are elected to safeguard and act on the behalf of the citizens of Ontario and you made a decision to take a plant that was going to be here, moved it there to bring the power back here—I'm going to leave that one for the folks to decide too.

Auditor, so we now know that there were massive costs involved for the cancellation of the plant in Oakville. Given this government's track record, and I do want to comment for a second about all of these promises they've made about—now the Minister of Energy promising that there's going to be a reduction in power? We're going to be watching for that on the hydro bills.

But a funny thing he said in the House yesterday, or in an interview, is that your power bills are going to go up as a result of the cancellation of this plant.

**Mr. Victor Fedeli:** It was in the Leg.

**Mr. John Yakabuski:** In the Leg. They're going to have to get their story straight.

But given their track record, which is pretty dismal—you've had a chance to look at these contracts now. What's the cancellation fee if they cancel the plant in Napanee? Because we never know what these guys might pull next.

**Ms. Bonnie Lysyk:** Okay. In the contract, there is a break fee of about \$50 million, and if the plant is cancelled, the arbitration framework that was put in place for discussions around Oakville come back to play, so that's the framework that they're negotiating under again, if the Napanee plant doesn't go through.



**Mr. John Yakabuski:** That brings me to another question. So we're talking hundreds of millions of dollars of cancellation costs here, much of it to the benefit of TransCanada, which you have said repeatedly—every time there was a dispute, it was resolved to the benefit of TransCanada Energy essentially. Is it possible there was an, "Okay, we're going to throw in"—which seems kind of small—"a \$50-million cancellation fee for Napanee, because we're going to be so enriched by this cancellation of the Oakville plant that we can actually make this one work."

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The fees involved in the Oakville cancellation, I think, for the average person, they're just mind-blowing. They're mind-blowing, the costs of making this decision—and a decision, as you have said in your report—and I thank you for that report; this is excellent stuff—that the OPA advised against. They run to the OPA when it suits them, but when the OPA told them, "Don't move that plant to Napanee. That's a disaster. This is a financial boondoggle," they went ahead and did it.

Just this whole mess—there's just this confusing aura around this. It's something out of a horror movie. Do you have any comments on the mess?

**Ms. Bonnie Lysyk:** No, I don't have any additional comments. I'd let our report just stand the way it is.

**Mr. John Yakabuski:** Oh, my goodness gracious.

On page 22, \$36 million more for turbines, "for the cost of the modifications as discussed in section 4.3.1"—we see in your chart the \$35 million for the additional gas for the lower efficiency, but I don't see anything for the \$36 million.

Is this accounted for somewhere, or is it not accounted for, that additional \$36 million? Are we talking about a potential additional \$36 million, or is that accounted for somewhere else?

**Ms. Bonnie Lysyk:** On page 8, if you go to figure 2, the \$36 million is embedded in the \$210 million in that chart.

**Mr. John Yakabuski:** It is embedded in the \$210 million. Thank you very much. My colleague and I were unsure about that. You know, we're actually relieved, because I didn't know what I was going to say to my grandkids if I said another \$36 million had to be added to the bill.

**Ms. Lisa MacLeod:** You're not old enough to have grandkids, are you?

**Mr. John Yakabuski:** Oh, yes. Yes.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. John Yakabuski:** How much?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. John Yakabuski:** Oh, my goodness.

Kitchener-Waterloo: They had demonstrated that there was an actual need for power in that district. In Cambridge, there were—so there were some proposals for a power plant there, and there were proposals from other proponents as well.

It's interesting that the government decided that instead of relocating this plant to the Kitchener-Waterloo

area—where there was at least a demonstrated need of power, and which then would have been much cheaper, because the transmission costs from Sarnia to Kitchener would be minuscule relative to Napanee, and the pipelines are already in place; they could have handled that—they still made the decision to move this to Napanee at an additional cost, simply for that decision of \$513 million. Is that correct?

**Ms. Bonnie Lysyk:** Well, I think—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. Mr. Tabuns: 10 minutes.

**Mr. Peter Tabuns:** Ms. Lysyk, when we talk about the increase in tolling framework for the expansion of the pipeline to carry gas to the plant, you talk about the fees going up over a three-year period. Is there the potential for the fees to increase beyond that?

**Ms. Bonnie Lysyk:** Whenever there is a fee increase, it will still have to be approved by the National Energy Board, but there is a risk that toll fees will increase beyond that.

**Mr. Peter Tabuns:** And is there a potential for Union Gas—which, I gather, is involved in providing a portion of the gas—to increase their tolls as well?

**Ms. Bonnie Lysyk:** Yes, there is.

**Mr. Peter Tabuns:** Okay. Are there any other gas or pipeline providers that could increase costs for this plant?

**Ms. Bonnie Lysyk:** The understanding that we have of the way—at this point in time, they have outlined the way the gas would flow, it's Union Gas and TCPL.

**Mr. Peter Tabuns:** All right. Who gets paid to provide the replacement power that will be needed in the period when this plant is not in operation? Will TransCanada plants like Halton Hills be making extra revenue for replacement power?

**Ms. Bonnie Lysyk:** Yes. It depends on, I guess, the source of the power and how it's dispatched. We can't comment on source.

**Mr. Peter Tabuns:** So there's no one particular plant that would be providing the make-up power?

**Ms. Bonnie Lysyk:** No. I think it's part of the whole grid system.

**Mr. Peter Tabuns:** On another matter, was any justification ever given to you for the decision of the Premier's office to make TransCanada whole?

**Ms. Bonnie Lysyk:** No.

**Mr. Gilles Bisson:** Did you ask?

**Ms. Bonnie Lysyk:** We did not interview people from the Premier's office.

**Mr. Gilles Bisson:** Fair enough.

**Mr. Peter Tabuns:** Have you ever seen an unnecessary "make whole" agreement like this in the past?

**Ms. Bonnie Lysyk:** Agreements are all different. This, in itself, is just a different agreement, never mind the concept of "make whole."

**Mr. Peter Tabuns:** Have you received any justification for removing the protections of the public interest from the arbitration agreement? The public would have been protected by the contract, which said that we wouldn't have to pay lost profits if this contract was can-



celled. The public was in a position to defend its interests by saying that it was unlikely that this plant would be built, given the obstacles in Oakville. Did you have any reasons provided to you for why these protections or defences were not included in the arbitration agreement?

**Ms. Bonnie Lysyk:** No, just that they followed the same direction as the letter of October 7, where they incorporated the profit part in the arbitration agreement.

**Mr. Peter Tabuns:** Actually, didn't this go beyond the October 7 letter? The October 7 letter just said, "We'll make you whole"—but in the arbitration agreement, it's not just "make whole," but abandon any defences about the real state of the project and its obstacles to construction.

**Ms. Bonnie Lysyk:** Yes. They took out the section that said, basically, that arbitrators weren't to bring to the table the fact that TransCanada Energy wasn't able to get the necessary permits and approvals.

**Mr. Peter Tabuns:** Yes, that was taken off.

**Ms. Bonnie Lysyk:** That was taken off the table, yes.

**Mr. Peter Tabuns:** One of the questions that you were asked by Mr. Delaney was about the difficulties we would have in litigation, what chances we would have had in court. You said that the actions that were taken weakened our court defences, if we had ever had to go there. Could you just elaborate on that? Let's say things broke down, there wasn't an arbitration agreement and we were taken to court. Would the fact that the Premier's office had told the OPA to say, "You'll be made whole," have weakened us in any litigation?

**Ms. Bonnie Lysyk:** I'm going to read the OPA lawyer's thing. If you're asking for an opinion directly from their lawyer: "If we had the contract run its course and TCE was unable to complete the plant for several years because of permitting issues, we could have terminated the contract because of the force majeure clauses."

The discrimination clause was the one that was linked to the profits, and that one, based on the wording in the contract, deals with the fact that it would need to be cancelled through a direction of the Legislative Assembly or an order in council. There had to be formality around the way the plant was cancelled for that clause to kick in. Information that we had suggested that it is possible that those could have been terms that were used, if there was the desire to go to court—to use those clauses as defence.

**Mr. Peter Tabuns:** The Ontario Power Authority had a legal opinion that you cited earlier, that, effectively, TransCanada Enterprises was in a situation where they were facing force majeure; they weren't going to be able to make their contract dates; the clock would have run out. Did the OPA take that opinion seriously? Was that a basis for them, arguing with the government that, "In fact, we don't have to give up these legal defences?"

**Ms. Bonnie Lysyk:** I think that's a very good question to ask the OPA directly. I can say that what we know is they did not think at first that it was necessary for them to include a paragraph in the October 7 letter that indicated TransCanada Energy would be entitled to their profits. I think that's a good question for the Ontario Power Authority.

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**Mr. Peter Tabuns:** Okay. Mr. Bisson, do you have any questions?

**Mr. Gilles Bisson:** Yes. Again, always glad to have you with us.

On page 15 of your report, second column over, second point down, you're saying, "According to documents that the Ministry of the Attorney General," etc. It goes on to say "the Oakville plant that would reflect the financial value of that plant's contract, including lost profits" is what the Premier's office more or less promised to TCE. That, obviously, was part of the problem as far as the elevated costs: factoring in the lost profits.

How much was it? I think I missed that somewhere, the lost profits. How much of the settlement cost is lost profits? Because "lost profits" is a pretty wide—

**Ms. Bonnie Lysyk:** We don't have what the lost profits would be—how to break it out of there, is what I'm saying, or what it would be in terms of the NRR, what was embedded in the NRR.

**Mr. Gilles Bisson:** Why is that?

**Ms. Bonnie Lysyk:** The profit component would be embedded in the NRR, and so—

**Mr. Gilles Bisson:** How much was the NRR again?

**Ms. Bonnie Lysyk:** On Oakville, it was \$17,277. Napanee was lower, \$15,200. Part of the difference between those was made up by the fact that OPA assumed the gas costs, assumed more of those additional costs, and the difference is why we have indicated here that we believe there were some benefits to TransCanada Energy.

**Mr. Gilles Bisson:** So if we tried to estimate what the cost is, how would we go about that—the lost profit?

**Ms. Bonnie Lysyk:** In my opinion, to know what that actually is for TransCanada Energy, it would be TransCanada Energy providing you with that information.

**Mr. Gilles Bisson:** Okay. That's something we may want to do as a committee.

On the Napanee thing—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Gilles Bisson:** Oh. Well, very quickly, on the Napanee part of it, it's always been a bit strange to me that you would build a plant where it's the farthest away, it costs the most to build, you don't have infrastructure, gas and hydro, to move gas in and electricity out. Obviously, there were other places they could have done this. Were you ever given an explanation of why they chose the most expensive alternative?

**Ms. Bonnie Lysyk:** Just like we have in the report, they were asked to negotiate for that location by the minister.

**Mr. Gilles Bisson:** My point, though, is the minister or the Premier never gave—because you didn't ask the Premier's office; you only did the Minister of Energy's, I take it. Did the Minister of Energy ever indicate why Napanee was their chosen, preferred site?

**Ms. Bonnie Lysyk:** No. We're not aware of the reason behind the choice.

**Mr. Gilles Bisson:** But there are clearly sites that would have been a lot less expensive.



**Ms. Bonnie Lysyk:** I can't comment on all the sites because we didn't see 100% analysis on all of the options that are there for sites.

**Mr. Gilles Bisson:** But it's clear to see Napanee ended up costing us more money than it would have in Waterloo.

**Ms. Bonnie Lysyk:** It cost more money than Oakville—

**Le Président (M. Shafiq Qaadri):** Merci, monsieur Bisson. Je passe la parole au gouvernement. Monsieur Delaney?

**Mr. Bob Delaney:** Thank you very much, Chair: the home stretch.

I have a few questions about the potential tolling increases. When you considered the additional tolling charges that could be implemented by the National Energy Board, did anyone from the auditor's office meet with either TransCanada PipeLines or the National Energy Board?

**Ms. Bonnie Lysyk:** No.

**Mr. Bob Delaney:** Thank you. From my understanding, the investments planned for the Parkway to Vaughan pipeline are not solely the result of the Napanee site. I understand there was a settlement between TransCanada PipeLines, Enbridge, Union Gas and GMI which is completely unrelated to the Napanee gas plant. Would that be correct?

**Ms. Bonnie Lysyk:** In the discussion on page 21, we took that information into account when we drafted the commentary on page 21. So we were familiar with that.

**Mr. Bob Delaney:** In other words, the upgrades to the pipeline were planned regardless of whether the Napanee plant was built or not.

**Ms. Bonnie Lysyk:** What we're referring to in our write-up is that in the contract for the Napanee plant, embedded in it is the requirement for OPA to cover capital costs associated with enabling the capacity to be there on the pipeline for Napanee. Specifically embedded in the contract is the requirement that OPA cover capital investments on that pipeline.

**Mr. Bob Delaney:** And that, I would assume, would refer to those pro-rated investments to carry the capacity of the gas to the Napanee gas plant, right?

**Ms. Bonnie Lysyk:** It would refer to—yes, modifying the pipeline so that at some point it would be available to supply gas to Napanee.

**Mr. Bob Delaney:** Right. But OPA would not be bearing the whole cost; they would bear that portion that relates to that generating station, correct?

**Ms. Bonnie Lysyk:** That's correct.

**Mr. Bob Delaney:** That's good. That's just what I wanted to clarify.

You talked earlier about the notion of whether TCE would be able to recover lost profits and you mentioned in your report that, in 2010, the OPA had obtained a legal opinion that indicated the cancellation of the gas plant may not have triggered a reimbursement to TCE. However, the committee heard some different testimony.

For example, in a memo prepared by the Attorney General's office on this very issue before the committee, it's clear there was a high level of uncertainty over how the various clauses could be interpreted. I guess you had the benefit of having prepared your report after it was all done, so you knew what obviously didn't happen. But at the time, it was what could have happened before the arrangement was complete.

To quote a section in the memo that looks at this clause: "There is considerable uncertainty surrounding the precise scope and meaning of the phrase 'consequential damages' in contractual exemption provisions ... Under"—referring to the English Court of Appeal's approach—TCE's "claim for lost profits would almost certainly be characterized as a direct, rather than consequential loss. "The whole point of the SWGTA contract was for TCE to design and build a gas-fired electricity generation facility, which could then be operated at a profit by TCE. As a result, the loss of these anticipated profits would seem to be a natural and direct consequence of the OPA's termination of the SWGTA contract."

In the same vein, when questioned about this clause and whether TCE wouldn't have a right to profits, John Kelly from the Attorney General's office responded that "TransCanada didn't accept that position."

Jim Hinds from the OPA testified, referring to the cancellation, that if it "was done in a way that showed disregard for contractual rights, there's also ... an opportunity that we could get sued for punitive damages...."

David Lindsay said that "if you have a contract and you don't honour the contract, the party on the other side can sue you for breach of contract and the damages would be all the benefits they were hoping to procure...."

So although you had the luxury of writing the report after the fact, wouldn't it be fair to say that while it was going on, there was quite a bit of uncertainty around where the courts might land on this particular issue?

**Ms. Bonnie Lysyk:** I guess I would say that decisions were made, and at the end of the day, based on what people at the time thought they needed to do, they did. All we're reporting here is that the consequence of the decisions is that there is a \$675-million additional cost for relocating the Oakville plant into Napanee. It ended up costing more than the Oakville plant, so I guess I would say that if one litigated the Oakville plant, would it have been more than this? I'm not sure.

**Mr. Bob Delaney:** Which, I think, is the point that everyone who came to the committee said.

**Ms. Bonnie Lysyk:** Right. It would be making TCE more than whole. I guess I'd say that we looked at the impact of the decisions that were taken, and we laid out what those decisions were in light of the contractual provisions that were there. So that's pretty much what we did in terms of putting forward a report that said, "Here's the estimated cost and here's what led us to that estimated cost." But I can't go back and ask, did people make the right or wrong decisions? We're not going to comment on right or wrong decisions. We're just going to comment that the impact of the decision is this.

**Mr. Bob Delaney:** Okay. I'll go on, then. Some specific costing questions: What I'd like to ask you about are some of the cost estimates that might have been made at the time the decision was made to relocate the plant. I've heard criticism of the government for not knowing what the cost of cancellation or relocation would have been at the time the announcement was made, but from the vantage point of the auditor, wouldn't that have involved presupposing the outcomes of negotiation, litigation and arbitration?

**Ms. Bonnie Lysyk:** Well, I think, if you're asking my opinion—

**Mr. Bob Delaney:** Yes.

**Ms. Bonnie Lysyk:** —if you're negotiating, like in this case, the cancellation of a plant and the relocation to another location, there are usually a lot of calculations and data and information behind that before it leads you up to an agreement. You know, you would hope that in making the decision that was made to build a plant in Napanee that it's all supported with appropriate analysis, and usually that analysis and that work takes a lot of time. So, depending when they started getting ready for negotiations, I would have assumed there was some idea with the people who were actually involved in the detail, some information with them around the potential cost.

But whether people at higher levels had the information, I can't offer comment on that—when people received information and when they didn't.

**Mr. Bob Delaney:** I'm sure you're aware that all three parties in the Legislature had opposed the Oakville plant and said it should be cancelled. In fact—

**Ms. Lisa MacLeod:** Point of order, Chair—

**The Chair (Mr. Shafiq Qaadri):** Ms. MacLeod on a point of order.

**Ms. Lisa MacLeod:** I'd just like to point out that there were two political parties that weren't in government, and my political party didn't support siting it there in the first place.

**The Chair (Mr. Shafiq Qaadri):** Exceptionally correct—not a point of order. We thank you for the reminder.

**Ms. Lisa MacLeod:** I just wanted to make sure that the member knew that.

**The Chair (Mr. Shafiq Qaadri):** And that's not a future aspiration, I presume, also. Fair enough.

**Mr. Bob Delaney:** Thank you, Chair.

I think what's interesting to me is that although we had asked for them in the Legislature, neither opposition party had provided us with their cost estimates for their commitments either.

In your review of the matter, have you ever discovered a cost estimate from either opposition party on how much they were willing to spend to fulfill their commitments to cancel either the Oakville or the Mississauga plant?

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. Bonnie Lysyk:** That was outside of our scope.

**Mr. Bob Delaney:** Thank you.

Thank you, Chair. I think we're done.

**The Chair (Mr. Shafiq Qaadri):** Thank you very much, Mr. Delaney, and to all those who participated, whether it was their turn or not, and thank you to you, Ms. Lysyk, and welcome to your first committee hearing as Auditor General of Ontario. Please give our regards to Mr. McCarter as well. Thank you very much.

Colleagues, we have a motion before the committee here—

**Mr. Bob Delaney:** Five-minute recess.

**The Chair (Mr. Shafiq Qaadri):** All right. A five- to 10-minute recess.

*The committee recessed from 1433 to 1446.*

**The Chair (Mr. Shafiq Qaadri):** Colleagues, welcome back to session. We have a motion. Mr. Tabuns.

**Mr. Gilles Bisson:** No, Monsieur Bisson.

**Le Président (M. Shafiq Qaadri):** Monsieur Bisson; excusez-moi, mon ami.

**Mr. Gilles Bisson:** Not a problem. I move that the Standing Committee on Justice Policy requests from the OPA the legal opinion referenced by the Auditor General of Ontario on page 14 of her 2013 Special Report: Oakville Power Plant Cancellation Costs, and that the OPA provide the material in a searchable electronic form to the Standing Committee on Justice Policy within seven calendar days of this motion passing.

If this has been provided to the committee, the committee requests that the OPA provide the file name, page reference and date distributed to the committee for the legal opinion referenced by the Auditor General of Ontario.

**The Chair (Mr. Shafiq Qaadri):** The motion is in order, and we'll entertain any comments. Just for the record, I let you know that that's in the middle of constituency week—so just to tell you.

**Mr. Gilles Bisson:** It's all right. We're all working.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. Any comments on this motion before we vote? Seeing none, those in favour of the motion? Opposed? The motion is carried.

Any further business before the committee?

Colleagues, I thank you for your indulgence. Committee is adjourned.

*The committee adjourned at 1447.*











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## Legislative Assembly of Ontario

Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 22 October 2013

# Journal des débats (Hansard)

Mardi 22 octobre 2013

## Standing Committee on Justice Policy

Members' privileges

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 22 October 2013

Mardi 22 octobre 2013

*The committee met at 0831 in committee room 2.*MEMBERS' PRIVILEGES  
MINISTRY OF ENERGY

**The Vice-Chair (Mr. Phil McNeely):** The meeting will come to order. We'll start with the swearing-in of Serge Imbrogno, Deputy Minister of Energy.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Serge Imbrogno:** I do.

**The Vice-Chair (Mr. Phil McNeely):** You have up to five minutes to make your opening statement.

**Mr. Serge Imbrogno:** Thank you.

Good morning. At my previous appearance before this committee on April 9, I outlined my ministry's efforts in the release of 8,800 pages of documents on September 24, 2012, and an additional 5,895 pages of documents a few weeks later, on October 12, 2012.

In responding to a question that day, I said that I thought there was value for future document searches in having a discussion with the committee outlining what we're doing, the process we're following, whose records we're searching and what terms we're using. I have written to this committee to explain our methodology and progress, which I will also briefly detail now.

As you know, on August 27 of this year, this committee made an additional request of my ministry for documents covering a broader range of dates and documentation. The ministry is in the process of collecting and preparing the records of current and former staff. Our minister's office is undertaking a similar search. As mentioned in my letters to the committee, gathering the records of the more than 250 current and former employees is a huge undertaking, but one that we have given the highest priority.

We have experienced a number of technical issues gaining access to older electronic records. Converting the documents to a searchable PDF format will also take time. Given these delays, and our understanding of the committee's interest in receiving documentation as soon as possible, on October 7 we submitted a partial release of documents to the Clerk totalling about 50,000 pages of documents. We are currently working to provide a

version of this initial package with all confidential, privileged and unrelated information redacted.

To speed up this process, we have hired the law firm of Wortzman Nickle, who specialize in e-discovery, to help redact this sensitive information to expedite our next disclosure to the committee. At the same time we are continuing to collect and review records from staff not included in the October 7 disclosure.

Thank you for this opportunity. I'm happy to take your questions.

**The Vice-Chair (Mr. Phil McNeely):** We'll now start with questions and we'll start with the government. It will be 20 minutes each and then, for the second round, 10 minutes each. You may begin, Mr. Delaney.

**Mr. Bob Delaney:** Just at the outset, Chair, for the information of the committee, our Chair, Mr. Qaadri, is not with us today. On behalf of the committee, I'd like to extend our deepest sympathies to his family on the passing of Mr. Qaadri's father.

Deputy, it's good to see you back.

**Mr. Serge Imbrogno:** It's nice to be here. Thank you.

**Mr. Bob Delaney:** We'll pick it up. I just want to have a little discussion this morning about some aspects of the Auditor General's recent report on the relocation of the Oakville plant. As a preamble, the report states, and I'll use the language of the report, "About two thirds of the net costs we have estimated have yet to be incurred, and all of the savings are estimated to be realized in the future."

The question is, "in the future," means amortized over a 20-year period. Would that be correct?

**Mr. Serge Imbrogno:** That's correct.

**Mr. Bob Delaney:** Okay. Based on that, it would be fair to say that the auditor's office took a fairly long-term, forward-looking view for their estimate of the costs? Again, correct?

**Mr. Serge Imbrogno:** That's correct. The plant would come into production in 2017-18, and at that point payments would begin for the electricity produced from the plant, and from 2017-18 those would go over the 20-year period. So the auditor is signalling that most of the costs that will come on to the rate base would start once the plant is constructed.

**Mr. Bob Delaney:** The auditor would then have been talking about a time frame of 2017-18, all the way out to 2037-38?

**Mr. Serge Imbrogno:** That's correct.

**Mr. Bob Delaney:** To do that projection, there's a bit of art in that, too, I would assume?

**Mr. Serge Imbrogno:** I think any time you're modelling what's going to happen in the future, 20 years out, there's a lot of assumptions that need to be made.

**Mr. Bob Delaney:** Right. In fact, the auditor cautioned—and I'll again use the language of the auditors' report, "There is considerable uncertainty when dealing with future events," and the report goes on to say that the cost estimates "are based considerably on judgment." Would you just expand for the committee on why it may be difficult to exactly pin down this type of a 20-year future estimate?

**Mr. Serge Imbrogno:** I think there's many variables that you have to take into account. There's inflation out for the 20 years. There's the price of gas. There's the price of infrastructure, tolling costs, gas management costs. All those will change over time. There's a number of regulators that would have to opine on different rates that are being charged. So all those things, you make your best guess today at what they will be 20 years over time. All those factors can go one way or the other.

**Mr. Bob Delaney:** Okay. In these 20 minutes we'll explore a little bit of that. Last Tuesday, the same day that the auditor tabled her report—sorry; that would be a week ago Tuesday, the OPA put out a statement saying that they stand by their estimate of \$310 million for the relocation cost of moving that plant from Oakville to Napanee. That's the same estimate that the Ontario Power Authority provided to this committee more than six months ago, on April 30. In their release, they note that the difference between the Auditor General and the OPA's estimate is largely attributable to the fact that they used "different rates to put future costs and savings in today's dollars and used different in-service dates for the plants."

Getting to the in-service dates a little later on, I'd like to focus for a moment on the different discount rates. The auditor used a 6% discount rate while the OPA used a 4% discount rate. Would you explain to the committee just what discount rates are and what type of judgment or factor would go into estimating that value?

**Mr. Serge Imbrogno:** Sure, I can do that. I think you said the AG used 6%. I think the AG used 4% and the OPA used 6%. I just want to make sure I heard that correctly. So AG 4%—

**Mr. Bob Delaney:** Sorry. Your numbers are correct. That's what I thought I had said.

**Mr. Serge Imbrogno:** Okay. The discount rate: When you have a stream of payments over time or a stream of revenues over time, it's common practice in financial analysis to present-value those cash flows or cost payments over time, so you can compare them to today's dollars. There are a number of different discount rates that can be used. They all try and reflect the time value of money, or the opportunity cost of those funds that you expense or those costs that you incur.

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The Auditor General basically uses a risk-free discount rate that reflects the long-term borrowing costs of

the province, and that cost is in the 4% range. Economists tend to use what we call a social discount rate, so from an economist's perspective, when we look at the opportunity cost of funds or the opportunity cost of payments, it's more than just an interest cost. We try and look at what is the opportunity cost of not investing in health, environment or other government investments, and economists tend to use what we call a social discount rate.

At the Ministry of Finance, the current estimate of the social discount rate is 5.5%. When you look at an organization like the OPA, they tend to have a discount rate based on what their risk assessment is of the market. The OPA is into contracting with electricity generators; they have a discount rate that they use that reflects what they think is their opportunity cost of funds, and the OPA uses a 6% discount rate.

The mechanics of it is, the lower the discount rate, the higher the PV, so when you have two cash streams that are the same and you use a lower discount rate, you're going to have different present value. So when the auditor uses a 4% discount rate versus the OPA's 6% discount rate, the Auditor General would get a higher present value even though the revenue streams are basically equivalent.

**Mr. Bob Delaney:** What was the OPA's rationale in using the discount rate of 6% that they chose, which is higher than the 5.5% that you mentioned?

**Mr. Serge Imbrogno:** I don't want to speak on behalf of the Ontario Power Authority. I would just say in general that when you're looking at different organizations, they use different discount rates, depending on where they think the risk is for them in the market. If you looked at a company, they could use an equity discount rate, which is more what they expect their equity returns would be. Sometimes you use a weighted average cost of capital when it's a commercial company. For the OPA, I think, whatever discount rate they select would reflect what they think is the risk of the investments they're making or the people they're contracting with.

**Mr. Bob Delaney:** The OPA and the Auditor General also differ on the estimated start dates for the Oakville plant, assuming it had gone forward, and for the future Napanee plant. In fact, the timing of those start dates are based on a number of different assumptions. Given this and the pros and cons behind using a 6% discount rate, 20 years from now, is it in the realm of possibility that the OPA's estimate of \$310 million could actually be closer to the total cost of the relocation?

**Mr. Serge Imbrogno:** Well, I think that if you look out 20 years, if you compare the cash flows, I think the cash flows between the OPA and the auditor, after a certain point in time, are not that different. It really is what you feel is the discount rate, so I don't think that would change. I think what would be known over 20 years is if those are the cash flows as forecast today. I think that, as you look out further, there's not a lot of difference between the auditor and the OPA in terms of, for example, gas management costs. It's hard to say, 20



years from now, whether it will be \$610 million or \$310 million or \$675 million.

**Mr. Bob Delaney:** When the auditor played out her scenario regarding the Oakville plant and when it might have been operational, the auditor's report estimated that, all things considered—including the municipal bylaws and the numerous court appeals, as well as a possible appeal to the Supreme Court by the mayor of Oakville—plant construction would have begun in mid-2012 and possibly been complete by December 2015. We accept that it's difficult to presuppose what the outcome would have been from the various legal processes, up to and including the Supreme Court. But the question here is, would you agree that the OPA would have still incurred savings from the fact that the construction of the plant would have been delayed as these processes played out?

**Mr. Serge Imbrogno:** No. I think both the OPA and the auditor agree there would be savings from not having the plant start on the original date, and so, by pushing it out, both agreed that there are savings.

For the OPA, because they use the contract start date, there are many more years of savings that OPA has taken into account, whereas with the auditor, in the auditor's judgment, the plant wouldn't start until 2015. She also believes that the relocated plant would start earlier than the OPA believes, so the auditor only has about 21 months of savings. So they both agree on savings; it's just that one is a bit more truncated than the other.

**Mr. Bob Delaney:** In Oakville, Oakville town council had tried to erect obstacles in the path of construction of the plant through the passage of municipal bylaws. As we've heard in this committee, the proponent, TransCanada Energy, had contested the bylaws with five appeals, both at the Ontario Municipal Board and in Divisional Court. In fact, when I asked the auditor about that, one of the things that she testified was that she had a legal opinion that TransCanada Energy would win each of those five appeals.

Just to refresh you, when Chris Breen from TransCanada testified at the committee, he told us: "We had a contractual obligation. It was very cleanly spelled out in black and white that that was our responsibility: 'You have to go through every possible channel to deliver on your obligations in this contract.' And we would have done that." He also said, "TransCanada were confident that they were going to eventually get to build the project on the Ford lands."

When Ben Chin, formerly of the OPA, was here, he told the committee that all of the obstacles put forth by the town of Oakville, to use his words, "could be overcome. It was just a matter of time." He concurred that TransCanada were very confident in their legal advice. And ultimately, in her report, the auditor concluded that the plant would have been built.

From your vantage point, was there a very real possibility that the courts would have ruled in the proponent's favour and TransCanada would have been able to start construction on the plant on the Ford lands in Oakville?

**Mr. Serge Imbrogno:** That's a difficult question for me to answer, because I wasn't around when those dis-

cussions were happening; I haven't seen any of the legal opinions from various sides. I would leave it to what's already in the public domain about whether the plant would have been constructed. I guess the fact that the auditor has accepted some of the start dates—

**Mr. Bob Delaney:** Let's put it a little differently, then. As soon as the bylaws would have been overturned, the permits would have had to be issued by the town of Oakville and TCE would then have been able to begin construction, correct?

**Mr. Serge Imbrogno:** I think that's how it would have worked, yes.

**Mr. Bob Delaney:** In other words, the province would have been taking a huge risk if it had tried to wait out a process that we now know was very much stacked in TransCanada's favour.

*Interjection.*

**Mr. Serge Imbrogno:** Could you repeat the question, because I was just—

**Mr. Bob Delaney:** In other words, from the province's perspective, the province would have been taking a huge risk if it had tried to wait out a process that we now know was stacked in TransCanada's favour and, in the end, the bylaws had been overturned.

**Mr. Serge Imbrogno:** Again, I'm not familiar enough with the contracts. It's really a contract between TransCanada and the OPA. The OPA would have all the information about different terms of force majeure, different contract provisions, discriminatory action clauses. So I'm really not in a position to say what the risk was.

**Mr. Bob Delaney:** If the decision to relocate the plant had not been made until after construction started, then would it be fair to say, in terms of Oakville, that the sunk costs would have been higher?

**Mr. Serge Imbrogno:** Sorry. Could you repeat that again.

**Mr. Bob Delaney:** Yes. If the decision to relocate the Oakville plant had not been made until after construction had started on the Ford lands in Oakville, would the sunk costs have been higher?

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**Mr. Serge Imbrogno:** I think it's my sense that it would be fair to say that TransCanada probably would have incurred more as set-up costs, so I think by definition the sunk costs would have been higher at that point.

**Mr. Bob Delaney:** To move now to talk about the potential tolling increases that were referenced in the Auditor General's report: Any increase in tolls, first of all, my understanding is, would require the approval of the National Energy Board; correct?

**Mr. Serge Imbrogno:** That's correct.

**Mr. Bob Delaney:** So prior to any National Energy Board review and approval, it would be somewhat speculative to try to determine how any future tolling costs would impact gas management costs associated with the Napanee facility; right?

**Mr. Serge Imbrogno:** Yes. I think until the NEB rules on a tolling arrangement, then it would be just a risk that's out there that's been identified, but the exact



amount of it wouldn't be known, obviously, until the NEB rules.

**Mr. Bob Delaney:** So with the report noting that a gas management plan must be approved by the Ontario Power Authority prior to TransCanada Energy purchasing any gas services, and furthermore, that TransCanada Energy and the Ontario Power Authority are currently looking at alternative gas supply arrangements, the \$140-million figure referenced in the auditor's report is at best an estimate and may be somewhat speculative; correct?

**Mr. Serge Imbrogno:** I think there's two issues. One is the gas management contract between the OPA and TransCanada. That's one set of costs. Then, in addition to that, there would be tolling costs that would be determined through the National Energy Board. I think the OPA has a forecast of what those gas management costs are. They won't be finalized until this committee of OPA and TransCanada agree, and the \$140 million is really an upper-end estimate of what a potential tolling cost might be, in addition to the gas management costs.

**Mr. Bob Delaney:** The investment planned for the Parkway to Vaughan pipeline isn't solely the result of the Napanee plant being sited along that route; correct?

**Mr. Serge Imbrogno:** Discussions have been happening related to the Parkway infrastructure investment before the Napanee plant was relocated to Lennox, so that's an existing discussion that's happening between TransCanada and the local distribution companies.

**Mr. Bob Delaney:** In other words, there was a settlement between TransCanada PipeLines, Enbridge, Union Gas and GMI which is completely unrelated to the Napanee gas plant; correct?

**Mr. Serge Imbrogno:** Yes, that's correct.

**Mr. Bob Delaney:** So those upgrades were planned, regardless of whether this new facility in Napanee would be built or not built; correct?

**Mr. Serge Imbrogno:** That's my understanding, yes.

**Mr. Bob Delaney:** In terms of the \$615-million cost, the Auditor General's report notes that two thirds of the net costs and all of the savings have yet to be incurred. Could you explain how this would be amortized over the next 20 years?

**Mr. Serge Imbrogno:** Well, starting when the plant is constructed, the OPA would make a payment based on the net revenue requirement. Those payments would happen over the next 20 years.

Are you asking about how that would be reflected in rates, or just how it's—

**Mr. Bob Delaney:** How do you amortize it?

**The Vice-Chair (Mr. Phil McNeely):** You have less than a minute.

**Mr. Bob Delaney:** Do you simply average it over the 20 years? Do you front-end or back-end load it? What would be the mechanics of that amortization over 20 years?

**Mr. Serge Imbrogno:** I think you would have to make certain assumptions about the start date of the plant and how the plant would run, because you're paying a

certain megawatt hour payment. You'd also have to make assumptions about what revenues the plant would get from the market. There's a deeming provision in the contract. So I wouldn't say it's front-end loaded, but it's not averaged over the 20 years either. You'd have to make certain assumptions of when the plant is running, more or less, and you'd model that out. So it's possible in certain years the plant might run more, as you have nuclear outages, and then, as the nuclear plants come back, you might run the plant less.

**The Vice-Chair (Mr. Phil McNeely):** Thank you. The 20 minutes is up. We'll go to Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. Good morning, Mr. Imbrogno. How are you today?

**Mr. Serge Imbrogno:** I'm doing well, thank you.

**Mr. Victor Fedeli:** Good. It's good to see you back here again. You were here on April 9 of this year.

**Mr. Serge Imbrogno:** That's correct.

**Mr. Victor Fedeli:** The Mississauga power plant cancellation auditor's report came out at the end of April. When would you have seen the draft of the Mississauga report? How many weeks before this came out?

**Mr. Serge Imbrogno:** Sorry, the Oakville report or the—

**Mr. Victor Fedeli:** Mississauga.

**Mr. Serge Imbrogno:** Mississauga. I think maybe a week before or in that range.

**Mr. Victor Fedeli:** The auditor told us it was six to eight weeks in advance that the ministry people were given the copy. Would you have been one of those people?

**Mr. Serge Imbrogno:** I would have probably been the first one to get it.

**Mr. Victor Fedeli:** So is it six to eight weeks, as he said, or a couple of weeks?

**Mr. Serge Imbrogno:** This is—

**Mr. Victor Fedeli:** Mississauga.

**Mr. Serge Imbrogno:** Mississauga. I'd have to go back. I know that I got the Oakville report about a week before it was put out.

**Mr. Victor Fedeli:** If the auditor told us it was six to eight weeks before, do you think he was accurate?

**Mr. Serge Imbrogno:** I'm sure he was totally accurate, yes.

**Mr. Victor Fedeli:** Now I am switching to Oakville.

**Mr. Serge Imbrogno:** Okay.

**Mr. Victor Fedeli:** I'll come back to Mississauga. I'm going to tackle you on the \$5-million NUG contract in Mississauga, but I'll get to that a bit later.

When we had you here—I'm going to read one sentence from the transcript. This is on this \$40 million. These are your words: "The \$40 million was our estimate of the termination at the time, what the sunk costs were that would be paid for by the Consolidated Revenue Fund. We knew that there would be other costs and benefits of relocating to a new site and those would be part of the obligation of the ratepayer."

That was your statement back then. Do you recall that?



**Mr. Serge Imbrogno:** Yes.

**Mr. Victor Fedeli:** A little later, about two minutes later, you also said this: “I think the minister knew—I believe—that the \$40 million was the sunk costs paid for by the taxpayer, and there were other costs and benefits to the system that would be through the rate base.”

Do you recall that, as well?

**Mr. Serge Imbrogno:** Yes, I do.

**Mr. Victor Fedeli:** Why, then, would you think the minister would continue to say, “You’re going to hear a lot of numbers but there’s only one number you need to know and that’s the total cost is \$40 million”? Why would you think the minister would say that if he knew, as you said twice here, that there were going to be other costs?

**Mr. Serge Imbrogno:** I think if you look at the minister’s statement closely, he does, I believe, say “in the end, attributed to the taxpayer.” So he—

**Mr. Victor Fedeli:** So he forgot to tell us about the money to the ratepayer.

**Mr. Serge Imbrogno:** He may be consistent saying that the \$40 million is taxpayer, but there were other costs and benefits.

**Mr. Victor Fedeli:** You told us that the minister knew at the time there were indeed other costs for the ratepayer.

**Mr. Serge Imbrogno:** The minister would have been aware of the \$210 million for the turbines. He would have been aware that the OPA had taken on gas management costs, although at the time, we didn’t have a firm estimate of what that would be. There was a committee that would be set up, so over time those would be firmed up. There were connection costs that he would have been aware would have been part of the additional costs.

**Mr. Victor Fedeli:** Those are adding up into the hundreds of millions, by the way, between the costs and the savings.

**Mr. Serge Imbrogno:** Right.

**Mr. Victor Fedeli:** The net is still hundreds of millions, as we ended up learning.

**Mr. Serge Imbrogno:** Yes, and just so I’m clear, at the time we knew that the Oakville contract had certain costs attributed to it, so we would have tried to back those out of the net revenue requirement.

**Mr. Victor Fedeli:** I understand.

**Mr. Serge Imbrogno:** The incremental costs at Napanee were not known at the time. We knew they would be incrementally potentially higher, but we didn’t have a firm estimate to say how much—

**Mr. Victor Fedeli:** Back when you were here in April?

**Mr. Serge Imbrogno:** No, when we were negotiating the actual deal back in September.

**Mr. Victor Fedeli:** Because here at the committee, after we were maybe about halfway through, you and I had a pretty good chat about these costs, and between us, we started talking about the value TransCanada was seeking as \$503 million plus \$210 million plus \$37 million. I asked you, “Is that kind of where their starting

point was back in ... 2011?” We came up, here at the table, a year and a half before the auditor—at that particular time, the numbers that came out would have been half a year before the auditor—\$750 million was our estimate back then. The auditor did confirm \$675 million plus an additional \$140 million, for an \$800-million number. So we were kind of in the middle.

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So you and I really were talking about this kind of number, and I had asked you at the time, “You prepared this document, I presume”—these are my words; I’m quoting—“or had it prepared. This is a document you originated. You’re sending this.” You started by saying:

“Hi,

“Attached are initial comments on the TCE model.

“Serge.”

At that time, we were indeed in the \$750-millionish number. Do you confirm that today?

**Mr. Serge Imbrogno:** I just wanted to—I don’t have that in front of me. I think it’s referring to when I was working at the Ontario Financing Authority. It was during the arbitration process. It was when TransCanada was sharing their pro forma models and we were looking at—

**Mr. Victor Fedeli:** It was December 2011.

**Mr. Serge Imbrogno:** So it was in the context of the arbitration. It was looking at what TransCanada felt they would recover in terms of sunk costs plus lost profits plus terminal values. So we would have looked at that model.

**Mr. Victor Fedeli:** They were pretty close, weren’t they? I mean, they ended up at \$750 million and the auditor came in at \$675 million plus perhaps another \$140 million, which looks like it will come through when the ruling comes through. So you knew, back in December 2011, that the scope TransCanada was looking for was in the \$750-million range.

**Mr. Serge Imbrogno:** In the context of the arbitration, that’s correct, yes.

**Mr. Victor Fedeli:** Okay. So back in—

**Mr. Serge Imbrogno:** Just to clarify, not that we agreed with TransCanada that that’s what they were due, but that’s from our understanding—

**Mr. Victor Fedeli:** Well, that brings us to the next point. So you understood, back in December 2011, that the scope of this was in the \$750-million range. That’s the letter you wrote: “Attached are our initial comments....” You’re going back and forth debating the \$750-million number. You said you did not necessarily agree with them, but this is the scope that they were talking. What happened then? The Premier’s office agreed to make TransCanada whole. Is that when you threw the towel in and said, “Well, if we’re going to make them whole, we already know the number is around \$750 million.” Is that kind of what happened next?

**Mr. Serge Imbrogno:** I think the sequence was a little bit different than that, Mr. Fedeli.

**Mr. Victor Fedeli:** I would appreciate hearing it.

**Mr. Serge Imbrogno:** When I came into the process, the arbitration agreement had already been put in place,



so whatever terms of that arbitration were already reflected. I think the arbitration agreement said that the plant would have been built, and the plant would have been built on time. Then, based on that is how we did the analysis going forward. So whatever agreements were discussed would have been before the arbitration agreement was signed.

**Mr. Victor Fedeli:** I understand that, and I don't disagree with you for a moment on that. Basically the arbitration agreement is discussed, it's agreed to and the number that we knew back in December 2011 was going to be in the \$750,000 range, if it was all approved.

**Mr. Gilles Bisson:** \$750 million.

**Mr. Victor Fedeli:** \$750 million. Thank you. If it was all blessed.

**Mr. Serge Imbrogno:** Based on what TransCanada felt was what the contract value was to them.

**Mr. Victor Fedeli:** Well, it seems to be more than just what TransCanada felt, because it did happen. The auditor has told us now that these numbers, almost to the dollar, are indeed the numbers that did happen: 503, 385 minus the discount rate—they used 5.25% back then as the discount rate. That's all in the transcript of our discussion. So you came up with a number of \$504 million using that discount rate. It was smaller numbers if you use a different discount rate and a different term. My point is: Back in December 2011 we knew that it was \$750 million if the settlement was going to be granted.

**Mr. Serge Imbrogno:** Yeah, but just the settlement—

**Mr. Victor Fedeli:** I'll take the "yeah." The "yeah" was good.

**Mr. Serge Imbrogno:** But I think it's important: The settlement would have been paying for the turbines, paying for the lost profits, potentially a terminal value, but—

**Mr. Victor Fedeli:** That's exactly what the auditor went through: turbine purchase, \$210 million; modifications, \$36 million; sunk costs, \$40 million; legal, \$3 million; gas delivery and management, \$577 million—we were a little off on that. But then, when you get to the lower price negotiated, it's minus \$275 million, so basically we're in the same zone. Mind you, we were using five and a quarter, so we're off by a per cent or so there.

**Mr. Serge Imbrogno:** But in that context, it would have been a payment to TransCanada if the arbitration went TransCanada's way.

**Mr. Victor Fedeli:** So we didn't bother with arbitration because we just jumped in and the Premier said, "Make them whole."

**Mr. Serge Imbrogno:** No, I'm just saying, going forward, what we have now is we're actually getting generation, we're getting electricity, we're getting payments from TransCanada for the electricity—

**Mr. Victor Fedeli:** We're getting nothing today. Let's remember: There's nothing today. This is \$675 million plus \$275 million. We're not getting anything for that; we're getting air. Let's be clear about that.

Back in 2010, when we knew it was going to cost \$750 million, did we know that—the auditor has con-

firmed that \$513 million was made because of the poor site that was chosen: Napanee, so far away from Oakville, where the power is needed. How did we get to that figure?

**Mr. Serge Imbrogno:** The arbitration process continued into September 2012. The government decided that, rather than—there was going to be a model exchange and a valuation exchange. It was a decision that we would have one more opportunity to find a commercial agreement, and at that point, we were looking at different potential locations for the TransCanada site.

**Mr. Victor Fedeli:** You don't have to be an energy expert to say, "Wow, that's a long way from Oakville. Isn't it going to cost a lot of money to get material there, and isn't it going to cost a lot of money to get power back? Aren't we going to have a line loss?"

Did anybody go through those calculations as the auditor did? She sat in that very chair, Mr. Imbrogno, and she went through these items one by one and said that because Napanee was chosen, the gas delivery and management cost a net increase of \$300-and-whatever million. But the hydro connections, because it's Napanee, was a certain percentage of the \$43 million. The gas for less efficient turbines is \$35 million. The transmission system upgrades, because it's out there, is \$81 million. The line loss for power to travel is \$32 million, and on and on and on. She's not an energy expert; I'm not an energy expert. But we can all figure out, "Wow, that's a heck of a long way to go to get power when there are other areas nearby that may be willing host communities."

Did anybody even question why Napanee? Or did anybody do the math and say, "If we go to Napanee, it's going to cost at least \$500 million more"? Did anybody do that?

**Mr. Serge Imbrogno:** When we were looking at the various potential locations for the relocated Oakville site, one of the key criteria that we looked at was a willing host, and I think the minister felt comfortable a willing host was potentially an OPG site that had an existing thermal plant on it.

**Mr. Victor Fedeli:** But \$500 million: Did anybody do that—just scratch their noodle for a second?

**Mr. Serge Imbrogno:** What we did is, we looked at existing OPG sites. We looked at Lambton; we looked at Nanticoke; we looked at Lennox; we looked at Wesleyville. Each of those sites has pros and cons. Once you're moving the plant out of Oakville that had access to transmission, had access to the gas management—

**Mr. Victor Fedeli:** What you're saying, in these pros and cons, is that somebody actually did figure out that one of the cons is \$513 million that the taxpayer—pardon me, the ratepayer—would pay to get power there and back?

**Mr. Serge Imbrogno:** No. At the time, what our rationale was, we would take the Oakville contract as is and move it to one of the other sites. At the time, the Oakville contract had gas management costs with TransCanada. So it wasn't one of the factors we looked at. The



key factors we looked at was willing host, transmission, and access to gas.

**Mr. Victor Fedeli:** Did anybody look at this? It's a half a billion dollars. Nobody? Even I could figure that out, a long time ago, that this is going to cost a lot of money. If you look through the transcripts, we've asked time and time, "That's a long way away. What does it cost?"

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Nobody sat in that chair and told us, by the way, "Oh, yes, there's going to be this cost, this cost, this cost." Everybody said, "Oh, no, it may be incremental." But we're talking—as the auditor showed us, it's half a billion dollars extra for that foolish decision. Never mind the decision to cancel. Never mind the relocation choice, which was purely a government choice. The auditor told us that the minister made the choice. The minister said, "We're moving it to Napanee." That sentence cost the ratepayers \$513 million.

**Mr. Serge Imbrogno:** Each site had its own issue. In Lambton we would have had to spend potentially \$500 million for transmission—

**Mr. Victor Fedeli:** Let's talk about Lambton. What the auditor told us about Lambton is that because the gas is so close—now I'm at Mississauga, by the way; I'm switching over to Mississauga. This is from the first auditor's report. It's under "Other benefits to Greenfield." These guys made out like bandits: "We estimate that Greenfield will save about \$65 million (in present-value dollars) in pipeline charges over the 20-year life..."

Because they moved the Mississauga plant to Lambton, where gas in Lambton is so close to Sarnia, they're getting paid the price as if the gas was coming to Mississauga, but it's only whipping across over to Lambton. They—the proponent, Greenfield—get to keep that \$65 million. Who the heck negotiates that kind of a deal?

**Mr. Serge Imbrogno:** It is a negotiation, and—

**Mr. Victor Fedeli:** It's \$65 million. That's on top of being paid—

**Mr. Serge Imbrogno:** I understand. I think there are gives and takes in the negotiation, and those would have been taken into account. There would have been other takes that aren't shown—

**Mr. Victor Fedeli:** As I said to you in the last—if you look at the transcript, because you did say that there was give and take. I said, "Yes, the government is giving and the proponents are taking." That's what I said to you last time, and I say the same thing to you again.

The last time we were together was just before the auditor came out, and I asked you about the \$5-million NUG. I'm going to be blunt here: You were less than forthcoming about that \$5-million NUG. Only a few days after you left here, after you would have known what was in the auditor's report, the auditor came clean on what you guys did. You paid \$5 million for nothing, absolutely nothing, on this side deal. It's called a side deal.

What it said here, under November 25, 2011, was: "... side agreement, the OPA agreed to pay ... \$5.4 million

... to satisfy Eastern Power's demand...." You gave them a non-utility generation—a NUG—contract, and I'm going to say it was a fake NUG contract, because if you didn't need the power, they got to keep the money. Lo and behold—wow. No new power supply contract for the site ever materialized, and therefore Eastern Power kept the \$5.4 million. That's just a gift, a kiss—\$5.4 million. Who negotiates these kinds of side deals? Under what authority?

**Mr. Serge Imbrogno:** First, Mr. Fedeli, I think I've always been forthcoming to the committee.

**Mr. Victor Fedeli:** I asked you about this NUG deal, and what you said to me was: "We'd better wait and hear what the auditor has to say." Why didn't you just tell us that day?

**Mr. Serge Imbrogno:** I was part of the OEFC. I was part of the agreement to settle a long-outstanding legal dispute. The OEFC board was comfortable with the \$10-million payment, and that's what we paid—

**Mr. Victor Fedeli:** Yes, the \$10 million, which brought it from \$180 million to \$190 million, but what about that side deal?

**Mr. Serge Imbrogno:** The \$5.4-million payment is a contract between the OPA and Greenfield, Eastern Power.

**Mr. Victor Fedeli:** For nothing.

**Mr. Serge Imbrogno:** I don't control that. I think you should have the OPA come in and explain that.

**Mr. Victor Fedeli:** You know what they're going to tell me: that you guys told them to do it.

**Mr. Serge Imbrogno:** I did not negotiate that.

**Mr. Victor Fedeli:** But you can't have one of these every time.

**Mr. Serge Imbrogno:** No, I'm not saying that. I'm trying to explain that the \$10 million was an outstanding litigation.

**Mr. Victor Fedeli:** Yes, I got that.

**Mr. Serge Imbrogno:** The other payment between the OPA—

**The Vice-Chair (Mr. Phil McNeely):** One minute.

**Mr. Serge Imbrogno:** —and Eastern Power is something the OPA needs to explain.

**Mr. Victor Fedeli:** No, it's not. That outstanding payment was for \$15 million, and I've brought that email chain here many, many times. It says, "We want \$15 million." In fact, the Auditor General says it's \$15.4 million as a precondition. They wanted it as a precondition to settle the lawsuit. The government agreed to pay the \$10 million as an absolute maximum that it felt comfortable giving, and they left the other \$5.4 million for somebody else to pay. You can't tell me, "Oh, it was an OPA contract for power. I don't know anything about it." Come on. They wanted \$15.4 million. The OEFC agreed to pay only \$10 million, and that \$5.4 million was a secret side deal that we disclosed here in this—I disclosed it in the Legislature and everybody just shakes their head, "Oh, I don't know anything about it. Ask somebody else." You know as well as I know that that was \$15.4 million.

**The Vice-Chair (Mr. Phil McNeely):** Thank you, Mr. Fedeli. We'll go to Mr. Tabuns.



**Mr. Peter Tabuns:** Thank you, Chair. Good morning, Mr. Imbrogno.

**Mr. Serge Imbrogno:** Good morning.

**Mr. Peter Tabuns:** Do you accept the Auditor General's report?

**Mr. Serge Imbrogno:** The government has accepted the report. The Premier asked the auditor to undertake the report, so yes, we accept the auditor's report.

**Mr. Peter Tabuns:** You personally accept the report?

**Mr. Serge Imbrogno:** Yes.

**Mr. Peter Tabuns:** It's a fair and credible stating of the numbers and the situation?

**Mr. Serge Imbrogno:** I think the auditor took the time to go through the numbers. As the auditor herself says, there are costs that will be incurred in the future, so they may change over time. But this is the best estimate, based on the assumptions that the auditor put out.

**Mr. Peter Tabuns:** So it's fair and credible and you accept it?

**Mr. Serge Imbrogno:** Yes.

**Mr. Peter Tabuns:** Mr. Delaney and the Liberals seem to be trying to cast doubt on the credibility of the report. He asks whether the future costs could be lower. Is it possible future costs could be higher?

**Mr. Serge Imbrogno:** Yes, future costs could be lower or higher. That's correct.

**Mr. Peter Tabuns:** Okay. In the case of the reduced monthly payments or the net revenue requirement—NRR—I'll just call it monthly payments so that everyone is speaking English. In your testimony when you were last here you said that you tried in the negotiations to reduce the monthly payments to reflect the extra costs Ontario was taking on for gas management. Is that correct?

**Mr. Serge Imbrogno:** That's correct.

**Mr. Peter Tabuns:** You were also trying to reduce the monthly payments to offset the cost of the turbine that Ontario bought. Is that correct?

**Mr. Serge Imbrogno:** That's correct.

**Mr. Peter Tabuns:** The turbine cost \$210 million; everyone knew that. What were you estimating would be the cost for gas demand if you were able to reduce the monthly payments by \$275 million and the turbine was \$210 million? It's about \$65 million. That's completely out of the ballpark for all the other numbers we've been given when it comes to gas management. Why was it set so low?

**Mr. Serge Imbrogno:** I think the OPA estimate at the time was that the gas management costs in Oakville were in the \$10-million-to-\$15-million range. They would have pulled that out of the model. The actual costs today for Napanee are tracking more in the \$40-million-to-\$50-million range. It would appear to be a low estimate at the time that was taken out of the—

**Mr. Peter Tabuns:** Actually, you know, what you've just said to me is very interesting. They simply took out the gas demand and management charge for the Oakville installation. Is that correct? That's the number that was used?

**Mr. Serge Imbrogno:** That's my understanding, yes, or at least their best estimate. They may have added a bit to it, but I think it was in that ballpark.

**Mr. Peter Tabuns:** The fact that this plant was hundreds of kilometres to the east and had a very much greater distance for gas to travel—that wasn't taken into account?

**Mr. Serge Imbrogno:** I think the understanding would be that there would probably be an incremental payment that would be required. I don't think at the time there were credible numbers about what that payment would be.

**Mr. Peter Tabuns:** No one did a calculation?

**Mr. Serge Imbrogno:** I think in the negotiation—it would have been part of this committee that OPA and TransCanada would be part of and that all would agree, and then they'd go to arbitration if there was a disagreement.

**Mr. Peter Tabuns:** Why did the people of this province take on this unpredictable, unknown cost? Why didn't you say to TransCanada, "Okay, we'll cover you up to the \$50 million and you pay for the rest"? Why did we take it on?

**Mr. Serge Imbrogno:** I think it was part of the negotiations. I think from the TransCanada perspective, they had a contract in Oakville with a known gas management cost that was built into that revenue requirement. I think from their perspective, going to Napanee, it was an unknown cost to them. The calculation was, "We'll pull out all your costs that we know in Oakville and then we'll have this committee decide together what the additional costs would be for Napanee."

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**Mr. Peter Tabuns:** And did the committee decide prior to signing the agreement?

**Mr. Serge Imbrogno:** No, it was set up so that over time the committee would come to an agreement since, when we were doing the negotiations, either side really didn't know what those gas management costs would be.

**Mr. Peter Tabuns:** So we signed off with no compensation, effectively, for this half-billion-dollar charge.

**Mr. Serge Imbrogno:** Well, it would have been the reduction in the net revenue requirement.

**Mr. Peter Tabuns:** Yeah, but the reduction was worth 10% of what we got stuck with.

**Mr. Serge Imbrogno:** I think the costs have turned out higher than was expected.

**Mr. Peter Tabuns:** Between the Ontario Power Authority—which specializes in developing new power plants and securing contracts—and TransCanada, a huge firm, no one could figure out that it was going to cost more to get gas to Kingston than to Oakville?

**Mr. Serge Imbrogno:** There was probably an understanding that it would be incrementally more. The exact amount wasn't known at the time, and that's why they struck this committee to finalize the amount.

**Mr. Peter Tabuns:** Why wasn't that reflected in the reduction of the payments that Ontario is going to pay?



**Mr. Serge Imbrogno:** Well, OPA would have pulled out what they knew the Oakville cost was and reduced the NRR by that amount.

**Mr. Peter Tabuns:** So we got exposed for all the costs of moving.

**Mr. Serge Imbrogno:** I think the province, or the ratepayer, would be exposed to the incremental cost of moving.

**Mr. Peter Tabuns:** And the incremental cost was about \$500 million.

**Mr. Serge Imbrogno:** I think now, with the costs that are coming in in the \$40-million to \$50-million range a year, that that would be the incremental amount.

**Mr. Peter Tabuns:** I know these matters are complex. I know they can be hard to predict. But between TransCanada on one side and the OPA on the other, the fact that no one would have a figure for this, even within the ballpark, is extraordinarily hard to believe. Was no one saying, "Hey, this could cost a lot of money"?

**Mr. Serge Imbrogno:** I think that either site we would have picked had pros and cons with it.

**Mr. Peter Tabuns:** I'm sure.

**Mr. Serge Imbrogno:** I think the Lennox site had access to gas, access to transmission, a willing host. If we would have moved it to Nanticoke, it only had 300 megawatts of gas capacity, so we would have had to build a pipeline. If we had moved it to Lambton, there were issues about transmission shortage. We might have to spend \$500 million on transmission.

**Mr. Peter Tabuns:** You know what—

**Mr. Serge Imbrogno:** I'm just saying every site had additional costs.

**Mr. Peter Tabuns:** I accept that every site would have difficulties. What you said to us previously was that the monthly payments would be reduced to make up for the fact that Ontario is going to spend more on gas management, and in fact, we took on this incredibly risky cost and we're paying the bill for it. TransCanada, effectively, is getting this big chunk of its cost written off without them having to give any compensation to us. That's the reality, is it not?

**Mr. Serge Imbrogno:** No. TransCanada would have had their net revenue requirement reduced by the Oakville gas management costs.

**Mr. Peter Tabuns:** That's right, and they weren't—

**Mr. Serge Imbrogno:** The incremental is being paid by the ratepayers going forward.

**Mr. Peter Tabuns:** Right. They got stuck with a half-billion.

Did the Ontario Power Authority support or oppose this transfer of costs from TransCanada to the province?

**Mr. Serge Imbrogno:** The OPA was part of the negotiating team, and I think that was part of the give and take in the negotiations.

**Mr. Peter Tabuns:** Did they raise any red flags? Did they oppose? Were they concerned about this transfer of costs to the province?

**Mr. Serge Imbrogno:** I don't recall the OPA raising it during the negotiations.

**Mr. Peter Tabuns:** Colin Andersen didn't raise it? No one in the OPA raised it?

**Mr. Serge Imbrogno:** He may have raised it with someone else, but I don't remember in our discussions or our debriefs of the negotiating team. I think it was understood that this committee would sort out the additional costs over time, and that the OPA would be on that committee, and they could go to arbitration if there was a disagreement.

**Mr. Peter Tabuns:** I'll turn it over to my colleague.

**Mr. Gilles Bisson:** Just following up on Mr. Tabuns's question, why in heck did you guys decide to choose the most expensive option? You wrestled yourselves to the ceiling. Why? There was certainly a cheaper way of cancelling this thing. Why did you guys decide to go with the Cadillac when you could have got the Volkswagen?

**Mr. Serge Imbrogno:** When I came onto the file, it was already into arbitration. The government wanted to—

**Mr. Gilles Bisson:** But certainly you must have been briefed, coming in, on how all this was set up. Why did the government choose the most expensive option?

**Mr. Serge Imbrogno:** I think my understanding was that the government wanted to get electricity out of any arrangement. They didn't want to make a lump sum payment or—

**Mr. Gilles Bisson:** But the government has cancelled contracts before. There are NUGs that had contracts signed with the province in the past that were cancelled, that never cost anywhere near this kind of money. Why, in this case, did the government decide to move to make TransCanada whole by the most expensive means? Were you ever explained why?

**Mr. Serge Imbrogno:** My job was to relocate the plant, provide advice on potential locations—

**Mr. Gilles Bisson:** I understand that, but did they brief you as to why it is that they chose the most expensive option, and do you ever say to yourself in the course of all this, "Oh my God, there's another way of doing this; this is expensive"?

**Mr. Serge Imbrogno:** I was asked to relocate the plant. The decisions were already made about arbitration going forward.

**Mr. Gilles Bisson:** Did it occur to you that this was a pretty expensive option?

**Mr. Serge Imbrogno:** Well, I think, as I said, any site that we looked at outside of Oakville that had a willing host had additional costs.

**Mr. Gilles Bisson:** But this was the most expensive. So you're being asked essentially to conclude this deal. Did it ever occur to you this was the most expensive way to conclude the deal with TransCanada and making them whole? Did the alarm bells ever go off in your head?

**Mr. Serge Imbrogno:** So part of it, we had the turbines already—to get electrons out of this arrangement would have been probably in the best interests of the ratepayer. Any site that we picked outside of the current one would have had sunk costs and additional costs, whether they be transmission, gas infrastructure.



**Mr. Gilles Bisson:** We have lots of capacity, as you well know, in our hydro system, far more than we use, and so my question is, in the process of concluding an agreement to make TransCanada whole and your implementing that, did you never, never think to yourself, “Oh my God, this is more money than we should be paying”? Did you ever at one point think that maybe there was a better way of doing this that would have been cheaper?

**Mr. Serge Imbrogno:** So the plant will come in 2017-18. Our expectation is—

**Mr. Gilles Bisson:** I’m asking the question, did you—

**Mr. Serge Imbrogno:** I’m just trying to answer. From a supply perspective, we do need the capacity in 2017-18. The OPA would have had to procure other capacity, so it’s in that context.

**Mr. Gilles Bisson:** First of all, we can debate that, but let’s say for the purpose of this question I won’t debate that. My point is, you were to conclude a deal that made TransCanada whole. In doing that, did you not at one point think, “My God, this is expensive. I can’t do it in the way that the government wants. I’ve got to advise them to do something else. This is going to break the bank”?

**Mr. Serge Imbrogno:** The PV calculation really is bringing all those costs forward. When the plant is built, TransCanada has to put in \$800 million in construction, they have to build the plant, run the plant and produce the power—

**Mr. Gilles Bisson:** So you never thought this was the most expensive option? That never occurred—

**Mr. Serge Imbrogno:** Given the circumstance, if you’re taking a contract and relocating it, there will be costs, and any site that we relocated it to, there were going to be—

**Mr. Gilles Bisson:** The part that frustrates the public—we wasted over \$1 billion on these particular deals, and nobody seems to want to fess up to the fact that, “My God, there was a cheaper way of doing this, and I was part of the process, and maybe I should have done things differently.” And number two is that nobody seems, at the end, to be held to account for that decision, but that’s a whole other thing.

So, as I was listening to your exchange with my learned colleagues from the Liberal caucus, you were essentially pushing back—

*Interjection.*

**Mr. Gilles Bisson:** I meant that as a compliment.

They were pushing back on the auditor’s report. Is that the purpose of your being here today, to try to push back on the auditor’s report and to spin the numbers in a way that the government needs? Is that part of why you’re here today?

**Mr. Serge Imbrogno:** No. I’m here to answer questions of the committee.

**Mr. Gilles Bisson:** Were you given any direction by the government in any way about what you should or shouldn’t be doing at this committee as far as strategy?

**Mr. Serge Imbrogno:** No.

**Mr. Gilles Bisson:** Because it sounded to me as if what the government was attempting to do, and you were

kind of helping, was trying to push back the auditor. And I’ve got to say, from the perspective of—you’re the guys who got it wrong and cost us \$1 billion, and if I’m going to believe anything in this, I’m going to believe an independent officer of the House, who happens to be the auditor, on the numbers, because I don’t think you guys have very much credibility on numbers, to be blunt.

So I ask the question again—and remember, you’re under oath—were you given any direction by the government as to your strategy of being here today?

**Mr. Serge Imbrogno:** No, and I’ve said to Mr. Tabuns that I’ve accepted the auditor’s report. I’m just trying to explain differences in discount rates and differences in start dates, which the auditor already mentions in her report.

**Mr. Gilles Bisson:** I think Mr. Tabuns was proving that it’s far more expensive than you guys realize. But again, for the record, you were not instructed by the government or by the minister in any way as to what your strategy at this committee would be today?

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**Mr. Serge Imbrogno:** That’s correct.

**Mr. Gilles Bisson:** Okay. And the second thing, the last thing—how much time do I have?

**The Vice-Chair (Mr. Phil McNeely):** Five minutes.

**Mr. Gilles Bisson:** Oh my God, we’re doing so well. You may even get some more time.

**Mr. Peter Tabuns:** I’m looking forward to it.

**Mr. Gilles Bisson:** Okay, just to the release of the documents: The committee has asked for these documents that go between January 1, 2012, and August 2013. We asked for that back on August 27. You’re before this committee today telling us all kinds of reasons why you’re having a hard time trying to release those documents. In your statement you say, “We have experienced a number of technical issues gaining access to older electronic records.”

These records are not old. These are more recent documents than what we had before. So what is that all about?

**Mr. Serge Imbrogno:** We have a number of staff who have left, so it’s more difficult to access their files.

**Mr. Gilles Bisson:** When you say “older” records, you’re not meaning older, because these are pretty recent documents. These are pretty recent records, right?

**Mr. Serge Imbrogno:** Yes, that’s correct.

**Mr. Gilles Bisson:** Okay. When do you expect to have all these documents before this committee as requested? We requested this back on August 27; we’re now into the month of October. When can this committee expect to have those documents?

**Mr. Serge Imbrogno:** Well, we provided the 50,000 pages. We’ve hired a law firm to go through the redaction process. I always hate to give dates, because you always end up having some issues. But they have been engaged; they are working this week and next week to—

**Mr. Gilles Bisson:** But it should be up to this committee to decide what’s redacted and not redacted. We requested documents.



There is a very defined power of a committee and of this Legislature. We are akin to a court. When we—

**Mr. Serge Imbrogno:** Absolutely. We—

**Mr. Gilles Bisson:** Just let me ask the question. We requested documents, and those documents should be provided. If they have to be redacted, that's up to this committee to decide if we want to redact something, not you. Why are you taking the position that you have to redact documents before giving them to the committee?

**Mr. Serge Imbrogno:** We've provided 50,000 pages of unredacted files. They are already with the committee.

**Mr. Gilles Bisson:** I understand that.

**Mr. Serge Imbrogno:** Our understanding was that the committee also wanted to be able to see which of those might be sensitive, so we are going through that process, but as of today you have 50,000—

**Mr. Gilles Bisson:** Unrelated documents, I'm not going to argue. If it's not related to what the request was on this particular issue, I understand; you're going to blank that out. But stuff that's related to the request doesn't have to be redacted. This committee has the right to ask for those documents, and what makes you think that you can redact documents this committee has requested?

**Mr. Serge Imbrogno:** Just to be clear, we have provided the committee with 50,000 unredacted pages. We are giving the committee the opportunity to look at: "If you wanted to redact something, here's what we're suggesting," but it's with the committee. I think we're trying to be helpful, but as of right now, you have all the unredacted files.

**Mr. Gilles Bisson:** So your intent is to give us all the unredacted files, and the only thing you're going to do is say, "By the way, here's some that you should be sensitive to."

**Mr. Serge Imbrogno:** That's right. We'll have two piles. Right now—

**Mr. Gilles Bisson:** But it will not be redacted when we get it.

**Mr. Serge Imbrogno:** No. Right now, you have 50,000—

**Mr. Gilles Bisson:** No, the stuff that's coming.

**Mr. Serge Imbrogno:** In the future?

**Mr. Gilles Bisson:** Yes, the stuff that includes this request by the committee.

**Mr. Serge Imbrogno:** We've given you a partial release, and all of those are unredacted. We're going to take those unredacted and redact them for you, so you'll have two—50,000 unredacted; 50,000 with redactions—and then all the other material will come in the same way.

**Mr. Gilles Bisson:** But I go back to the point, as far as the power to redact documents. The committee has the right to request documents. If you think there's something sensitive, point it out to us. But it's up to us to decide if it's redacted or not.

**Mr. Serge Imbrogno:** And that's why we're giving you both. The committee can decide not to accept any of our redactions.

**Mr. Gilles Bisson:** So where are you at in the release of these documents? You don't want to pin yourself down to a date. Are you within weeks? Days?

**Mr. Serge Imbrogno:** I would say weeks.

**Mr. Gilles Bisson:** Not months?

**Mr. Serge Imbrogno:** I don't think months, no. I think weeks.

**Mr. Gilles Bisson:** Okay. Well, I'd just remind you that this committee has requested documents. As you know, it's akin to a court of law, and when we request documents there's a penalty if we don't get those. I'm just going to remind you of that.

**Mr. Serge Imbrogno:** I understand. We're trying to be as responsive as possible.

**Mr. Peter Tabuns:** Mr. Imbrogno, just going back to the Napanee site and the opinion of the OPA, the auditor reported—

**The Vice-Chair (Mr. Phil McNeely):** One minute.

**Mr. Peter Tabuns:** Pardon?

**The Vice-Chair (Mr. Phil McNeely):** One minute.

**Mr. Peter Tabuns:** Thank you.

"The OPA," she writes, "did not think that Napanee was the optimal location because it would result in higher costs to deliver gas from the Sarnia area to Napanee."

You knew it was going to cost a lot more for gas management when you went to Napanee, but wasn't there any calculation on that?

**Mr. Serge Imbrogno:** My recollection is that when we decided to negotiate with TransCanada, it was more of a like-for-like movement of the contracts, that we would take the Oakville contract and try to move it to Napanee; take the \$17,000 net revenue requirement—there may have been possible inflation adjustment—and move it to Napanee. It was only during the negotiations with TransCanada after—I forget the date, but into September—

**The Vice-Chair (Mr. Phil McNeely):** Thank you. Time's up. We'll go to the government and Mr. Delaney for a 10-minute round.

**Mr. Bob Delaney:** Mr. Imbrogno, in the exchanges that you've had with the PCs and the NDP, there were a few things that you didn't really get a chance to finish. Are there any particular comments you'd like to add, just before I ask you a few questions?

**Mr. Serge Imbrogno:** No, that's fine. I'm not sure which ones I didn't finish, so I'll just go with the new questions.

**Mr. Bob Delaney:** All right. When we left off I was talking about the notion that with respect to Oakville, some two thirds of the costs and all of the savings have yet to be incurred, and we were talking about the amortization over the next 20 years. Minister Chiarelli has recently announced a series of measures that will decrease energy rates. For example, the renegotiation of the Samsung agreement takes \$3.7 billion off the rate base, and another \$1.9 billion has been taken off the rate base with the recent removal of the domestic content provisions.

**Mr. Victor Fedeli:** Point of order, Chair.



**The Vice-Chair (Mr. Phil McNeely):** Point of order.

**Mr. Victor Fedeli:** Are we discussing the Samsung deal? Is the door open here to now discuss the Samsung deal? Because we were given documents in confidence, and if—

**Mr. Bob Delaney:** No, we are not discussing the Samsung deal, but what we are discussing is the rate base.

**Mr. Victor Fedeli:** Excuse me, Chair, but if he has opened the door, I look forward to asking about the Samsung deal in my last 10 minutes.

**Mr. Bob Delaney:** Just to be fair, we are not opening the door or discussing the Samsung deal.

**Mr. Victor Fedeli:** I kind of heard the door open, Chair.

**The Vice-Chair (Mr. Phil McNeely):** It's outside the scope of this committee. We are not discussing the Samsung deal.

**Mr. Bob Delaney:** What we are discussing is the removal of \$5.6 billion from the rate base—

**Mr. Victor Fedeli:** Chair, point of order: So he is discussing the Samsung deal, and I do intend to ask about it.

**The Vice-Chair (Mr. Phil McNeely):** I've made the decision that we're not discussing the Samsung deal.

**Mr. Victor Fedeli:** But he's carrying on. After your decision, he's carrying on discussing the Samsung deal. I'm going to look forward to asking Mr. Imbrogno two questions about the Samsung deal that we were given in confidence.

**The Vice-Chair (Mr. Phil McNeely):** I caution Mr. Delaney to stay within the scope of this committee.

**Mr. Bob Delaney:** All right. We will stay then. When you include the \$675 million in that pool of both costs and savings, amortized over the course of 20 years, what effect would it have overall?

**Mr. Serge Imbrogno:** I haven't done that calculation. There are a lot of different variables that need to be taken into account. There are savings related to the Samsung renegotiation, but then it depends—

*Interjection.*

**Mr. Serge Imbrogno:** Sorry, am I not supposed to answer that?

**Mr. Victor Fedeli:** Point of order, Chair. If he's asking about savings and he's answering about savings, I am looking forward to asking two questions about the Samsung deal.

**Mr. Bob Delaney:** Okay, let's go back onto—

**The Vice-Chair (Mr. Phil McNeely):** Mr. Delaney, I've cautioned you before. Stay away from the Samsung deal.

**Mr. Victor Fedeli:** I won't, though.

**Mr. Bob Delaney:** Let's then talk about the process through which it was determined that the Oakville plant should be relocated to Napanee. The Ontario Power Authority told the Auditor General that their preferred location would have been in Kitchener-Waterloo-Cambridge. Could you just explain how it was that Kitchener-Waterloo-Cambridge was rejected as a possible relocation site?

**Mr. Serge Imbrogno:** The discussions of Kitchener-Waterloo-Cambridge took place before I became the deputy, so I really wasn't involved in them. My understanding was that they were trying to locate a peaker plant in Kitchener-Waterloo, so a smaller megawatt plant. I think, based on that, they changed the configuration of the turbines and had a negotiation between the OPA and TransCanada, but they were never able to come to contract terms, so the Kitchener-Waterloo site didn't transpire.

**Mr. Bob Delaney:** Okay. How did the Napanee option come about then? Who suggested Napanee as a viable alternative to Oakville?

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**Mr. Serge Imbrogno:** When we were in the arbitration process, we were always looking for a potential commercial arrangement, rather than completing the arbitration, and in September the government decided that we would have one more opportunity to try and come up with a commercial arrangement with TransCanada. One of the main criteria that Minister Bentley at the time was looking for was to make sure that if we relocate the Oakville contract, it would be to a willing host community, and a willing host community at the time was defined as an existing OPG site that had a thermal plant on it, whether it be gas or coal, and maybe some other OPG sites that were identified.

Based on that, we had a short list of sites that included Lambton, Nanticoke, Lennox and Wesleyville. We looked at each of those sites, and they had their pros and cons to each of them. So Nanticoke had excellent transmission capacity, was obviously a willing host, but it only had an existing gas pipeline that would serve a 300-megawatt or less generation facility. So if we tried to relocate at Nanticoke, there would be additional costs related to building the gas pipeline into Nanticoke. There were risks related to that. So that was one of the issues with Nanticoke.

We looked at Lambton. Lambton had access to gas. It had a willing host, but there were also issues there with transmission. There were potential congestion problems with the Lambton site—potential transmission upgrades of \$500 million if you put a 900-megawatt plant in Lambton. So we discounted Lambton.

Wesleyville didn't really have an existing facility on it. There were transmission issues, and we weren't sure if there'd be a willing host.

When we looked at Lennox, it has access to gas, access to transmission. It was a willing host.

Based on that criteria, we had put Greenfield site at Lambton and that left the Lennox site open for TransCanada. All these sites had their additional costs related to them, but we tried to find the site that met most of that criteria.

**Mr. Bob Delaney:** When you referred in your remarks to the "we" that did the looking, is that entity "we" the Ontario Power Authority?

**Mr. Serge Imbrogno:** Yes. We would have been working with the Ontario Power Authority to look at all



these sites, and provide us with a high-level assessment at each of those sites.

**Mr. Bob Delaney:** I'd like to talk a little bit about the sunk costs relative to Oakville confirmed in the Auditor General's report at \$40 million. When the relocation deal was finalized in September 2012, the Ontario Power Authority published the final memorandum of understanding in a news release on their website which stated, "The cost of TransCanada's plant at Lennox will be comparable to the cost of the original competitively procured Oakville plant." The only cost it provides is \$40 million for sunk unrecoverable costs. What the OPA has testified was that, at that time—September 2012—the future costs and savings were unknown; is that correct?

**Mr. Serge Imbrogno:** No, I think we had a firm cost for the \$210 million for the turbines. We had a firm cost for the \$40 million sunk costs. The other future savings and costs would have been unknown at the time.

**Mr. Bob Delaney:** Okay.

**The Vice-Chair (Mr. Phil McNeely):** You have one minute.

**Mr. Bob Delaney:** Oh, okay. Thank you, Chair. Back in September 2012, the OPA informed the government that the lower net revenue requirement, which is the monthly cost of the new contract, would offset the cost of gas turbines and gas management and delivery. The report says, "The OPA told us one of the reasons it will be paying a lower" net revenue requirement "for the Napanee plant's power is to offset its assumption of this cost." Could you enlighten me a little bit on the OPA's assumption that future savings would offset future costs? Was that accurate or not?

**Mr. Serge Imbrogno:** The negotiation with TransCanada would have been to move the Oakville contract to Napanee and make appropriate adjustments. Adjustments would have been made to the net revenue requirement for gas turbine costs and for gas management costs that were incurred at Oakville, connection costs that were incurred at Oakville. The incremental costs of the Napanee plant weren't—

**The Vice-Chair (Mr. Phil McNeely):** Time is up, and we'll go to Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you very much, Chair. Mr. Imbrogno, on page 9—we are at Oakville now—of the Auditor General's report, she states, "The contract for the Oakville plant contained protection to relieve both TCE and the OPA of any financial obligations if events beyond their control (force majeure events) caused the plant's ... operation date ... to be delayed...." She goes on to say, "with no penalty and at no cost."

Were you aware at any time that we could have gotten out of this whole TransCanada deal for nothing?

**Mr. Serge Imbrogno:** Mr. Fedeli, I was not the deputy at the time of that, so I wasn't involved.

**Mr. Victor Fedeli:** Did you eventually learn that, or did you just find out about that in the auditor's report? Or did you know that at any time before?

**Mr. Serge Imbrogno:** No. I would have become aware that there were different views on force majeure events.

**Mr. Victor Fedeli:** Do you agree with the auditor's view?

**Mr. Serge Imbrogno:** I accepted the report. I would just say that there—I don't know. I haven't talked to the auditor specifically on that, so I would just—

**Mr. Victor Fedeli:** So the auditor tells us we could have gotten out with no penalty and at no cost.

Let me ask you a very direct question: Are there any other recent power deals, not necessarily related to natural gas, that we could have gotten out of without any costs?

**Mr. Serge Imbrogno:** Not that I'm aware of.

**Mr. Victor Fedeli:** You're not aware of any power deals that we could have gotten out of without paying any costs?

**Mr. Serge Imbrogno:** No.

**Mr. Victor Fedeli:** Thank you. I appreciate your answer on that.

I want to go back to your last testimony. We're back at that \$750-million area. I asked you about the \$712-million offer, and you said you hadn't heard about the offer, but here's what you said, "I'm aware when you add those up you could get close to \$700 million." So, again, I'm going back to December 2011. You knew that the number, in your own words, "could get close to \$700 million."

**Mr. Serge Imbrogno:** In the arbitration process, if we went to arbitration and lost, our estimate was that TransCanada would have been potentially awarded that amount of money.

**Mr. Victor Fedeli:** That's exactly what I expected you to answer. That arbitration agreement was kick-started by our current Premier, Kathleen Wynne, when she was a cabinet minister. In fact, she is the chair of cabinet that signed the July 2011 document that kick-started that whole arbitration agreement.

If you knew back in December 2011 that if the arbitration was awarded—we're talking, in your own words, "I'm aware when you add those up you could get close to \$700 million"—who in the government would have known that when you added those numbers up, it could get close to \$700 million, as well as you. Other than you, who else? I'm looking for names.

**Mr. Serge Imbrogno:** Infrastructure Ontario, at the time, was the lead on the arbitration, so David Livingston would have been leading the arbitration process. I would assume David would have briefed others. I don't know directly who was briefed, but IO was the lead on the arbitration.

**Mr. Victor Fedeli:** That's IO. Anybody else now? Let me remind you, under oath, what Colin Andersen said. When I asked him, he had a one-word answer: "Everybody."

**Mr. Serge Imbrogno:** Back at the time, I would have been working at the Ontario Financing Authority, so I would have been supporting the arbitration, and I would have been involved.

**Mr. Victor Fedeli:** Did everybody at the Ontario Financing Authority know?



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**Mr. Serge Imbrogno:** That would have been involved in the discussions. They would have known. We would have built into the fiscal plan some risks related to, if the arbitration went the wrong way, and if the taxpayer had to pay for those costs. On finance, we would have built some risks into the fiscal plan.

**Mr. Victor Fedeli:** So IO people knew? At finance, the people involved in this file, everybody there would have known, who were involved in this file, that we're talking, in your words, \$700 million—mine were \$750 million, but it was math. We used a 5.25% factor back then and whatnot.

In July, when that document was signed, who would have briefed those cabinet members that, by kick-starting this program, it was going to cost \$700 million? Who would have been the person to have briefed the four cabinet members, including Kathleen Wynne, who signed off on that document to go ahead and do this?

**Mr. Serge Imbrogno:** I don't know, Mr. Fedeli. I wasn't there.

**Mr. Victor Fedeli:** Nobody at finance, the energy finance?

**Mr. Serge Imbrogno:** Like I said, I was at Infrastructure Ontario and later with David Livingston, so I don't know who would have been involved in the initial going-to-cabinet. I only became involved, if my memory serves correctly, after the arbitration agreement was—

**Mr. Victor Fedeli:** So you knew back in December 2011 that the cost would be \$700 million. Those are your own words: "I'm aware when you add those up you could get close to \$700 million." That's if the arbitration happened. Kathleen Wynne signed the order to kick-start this arbitration. Is it a reasonable assumption that anybody who started this arbitration would have any idea of the quantum of dollars we're talking about, or would they sign a kick-start not having any clue about how many hundreds of millions this would cost? What would your thoughts be?

**Mr. Serge Imbrogno:** I really don't want to speculate on what was provided to cabinet at the time.

**Mr. Victor Fedeli:** That's fair; that's fair enough.

Later in your testimony last time, when I asked you, "Did the minister know the full cost, the more-than-\$40-million full cost?" Your answer was, "We would have informed the minister of all of the components of those costs." You told me back then that, yes, the minister would have known that quantum of costs, whether it was specifically the \$700 million, or some number reasonably close. But the minister would have known there were costs—the former minister I'm talking about now.

**Mr. Serge Imbrogno:** On the Oakville—no, we would have briefed the minister on the components of the deal, but he would not have known the magnitude of the gas management costs because they were—

**Mr. Victor Fedeli:** Would you have given him a guideline on it, the number that, for instance, we had from the OPA—in one of our testimonies, they were

saying, "It's \$300-and-some million to \$486 million," right?

**Mr. Peter Tabuns:** It's \$308 million.

**Mr. Victor Fedeli:** Yes, to \$486 million. If we knew that number, I'm quite sure that you would have known that rough, approximate number as well.

**Mr. Serge Imbrogno:** At the time, the estimates were much lower than that. So we would have briefed the minister on the components of the deal.

**Mr. Victor Fedeli:** But still hundreds of millions at the end of the day. Maybe not \$700 million, but hundreds of millions. Is that fair?

**Mr. Serge Imbrogno:** The—

**Mr. Victor Fedeli:** It wasn't \$40 million. Can I ask you that? It wasn't \$40 million as the total.

**Mr. Serge Imbrogno:** Well, it was \$40 million in sunk costs, \$210 million in turbines, additional connection costs, additional potential gas management costs—

**Mr. Victor Fedeli:** Your number was \$700 million.

**Mr. Serge Imbrogno:** But I just want to be fair that we didn't have a—

**Mr. Victor Fedeli:** You said, under oath, "I'm aware when you add those up you could get close to \$700 million." You're still stuck with the \$700 million. Would you have told the minister—

**The Vice-Chair (Mr. Phil McNeely):** Let the witness answer the question.

**Mr. Victor Fedeli:** I haven't asked the question yet.

**The Vice-Chair (Mr. Phil McNeely):** You have, several times. He started to answer.

**Mr. Victor Fedeli:** Would you have told the minister it's \$700 million?

**Mr. Serge Imbrogno:** Mr. Fedeli, the \$700 million was arbitration. If we would have lost, what would have been the potential outcome if TransCanada won in arbitration and we didn't? What we're talking about now is moving the Oakville site to Napanee. We're getting electricity out of it. What's the additional cost to the ratepayer?

**Mr. Victor Fedeli:** Would he have known that number?

**Mr. Serge Imbrogno:** He would have known there would have been incremental costs in addition to the turbines, and the gas management costs would have been incremental.

**Mr. Victor Fedeli:** The auditor told us that it was the minister's choice to go to Napanee. Would he have asked, "By the way, guys, how much more if I go to Napanee?" Would he have been shocked to hear, "\$513 million more to go to Napanee," which the auditor told us? Would he have known that number, that it was \$513 million extra to go to Napanee?

**Mr. Serge Imbrogno:** At the time that we were looking at sites, each site had its own sets of costs, advantages, disadvantages—

**Mr. Victor Fedeli:** Was the disadvantage of \$513 million in extra cost to the ratepayer ever discussed?

**The Vice-Chair (Mr. Phil McNeely):** You have a minute.



**Mr. Victor Fedeli:** Thank you, Chair.

**Mr. Serge Imbrogno:** No, that cost wasn't discussed, because at the time, we didn't have a firm estimate of what that would be.

**Mr. Victor Fedeli:** So the former energy minister knew that it wasn't \$40 million, that the total cost was going to be more than \$40 million. The current energy minister obviously knows that it's not \$40 million. The former Premier knew that it was more than \$40 million; the current Premier knew that it was more than \$40 million. Would you have any idea why those four people continued, up until the auditor's report, to say, in all discussions, "The total cost is \$43 million"? In fact, the current Premier said, "Maybe even as low as \$33 million." It's certainly not \$700 million. Do you have any idea why the four of them would say it? Did they get misinformation from you?

**Mr. Serge Imbrogno:** I think we tried to be careful that the \$40 million are the sunk costs that would be picked up by the taxpayer.

**Mr. Victor Fedeli:** You're trying to be careful, and I appreciate that. They aren't. They have told us that the total cost is \$40 million, when they knew indeed that it was \$700 million.

**The Vice-Chair (Mr. Phil McNeely):** Time is up. We'll go to Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Imbrogno, the Auditor General reports that the Ontario Power Authority didn't think that this was an optimal site because of the long distance for transmission of gas and the cost of that. Did the OPA tell you and the minister's office about this prior to the decision to conclude a deal?

**Mr. Serge Imbrogno:** Mr. Tabuns, we had discussions of the various sites that I went through already: Nanticoke, Lambton, Lennox, Wesleyville. OPA would have provided us with some high-level views on each of those sites. I don't recall gas management costs as being one of those issues that was raised on Lennox, mainly because it was really during the negotiations that there was a decision to pull out the gas management costs rather than having that as something going into discussions.

**Mr. Peter Tabuns:** Who made the decision to take out the gas management costs?

**Mr. Serge Imbrogno:** It was part of the negotiations with the OPA; Infrastructure Ontario was at the table. It was the give and take of the negotiations.

**Mr. Peter Tabuns:** So you don't remember the OPA resisting taking over the gas management costs?

**Mr. Serge Imbrogno:** No, I don't recall that at all.

**Mr. Peter Tabuns:** Did the team, knowing that it was going to cost more to operate out of Napanee because of gas management costs, talk to Ontario Power Generation? Because they have a plant on that site, they would have some idea of what their gas management costs are.

**Mr. Serge Imbrogno:** I think, because it was a commercial negotiation between TransCanada and the OPA, there was probably reluctance to get information from OPG.

**Mr. Peter Tabuns:** You could have gone to Ontario Power Generation, which was paying those gas management costs because they are located so far from the central hub for gas distribution in southwestern Ontario, and gotten a much clearer picture of what those costs were. I think of OPG as being on your team, to tell you the truth. You are the Ministry of Energy; we do own them. We can use them for information, can we not?

**Mr. Serge Imbrogno:** It's possible. I think the OPG—the site at Lennox had interruptible gas. It may have been a different cost estimate.

The OPA has their gas management experts. At some sites, they already take on the gas management costs, so I think the idea was that the OPA would have the experts to provide us with the advice.

**Mr. Peter Tabuns:** That's why I find it very puzzling: because you do have the experts, and you would have had an estimate and would have known that it would cost a lot more to manage the gas and transport the gas at Lennox than at Oakville. Napanee is a lot farther from where the gas distribution occurs.

**Mr. Serge Imbrogno:** I believe that people understood there would be incremental costs. I think the extent of those additional costs was not known at the time.

**Mr. Gilles Bisson:** Can I just ask a quick question?

**Mr. Peter Tabuns:** Go ahead.

**Mr. Gilles Bisson:** If you're negotiating this, why wouldn't you go to one of the arms of the government that already can give you a pretty good estimate about what the costs were, in the case of OPG? Why wouldn't you have done that? You said earlier you thought it was because it was a commercially sensitive negotiation; I don't get where you were going with that.

**Mr. Serge Imbrogno:** OPA was in the negotiation. OPA had the experts that do gas management costs.

**Mr. Gilles Bisson:** But you're the Ministry of Energy, right, and you do have a relationship with OPG?

**Mr. Serge Imbrogno:** Yes.

**Mr. Gilles Bisson:** So why wouldn't you have gone to them—Mr. Tabuns's question? Those were the guys who had an idea what it cost. Why didn't you go to them to find out what the gas management cost was?

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**Mr. Serge Imbrogno:** Like I've said, the OPA has experts that do gas management costs, and—

**Mr. Peter Tabuns:** Yes, but clearly they didn't give you a figure for the Napanee site that even within the ballpark. You effectively took on this—we, sorry, not you; the people of Ontario, ratepayers and people who pay taxes, got stuck with this whole risk, and you didn't factor it in to reducing the cost to TransCanada at all. TransCanada got this huge gift in terms of a half-billion-dollar cost of management, a piece of risk completely taken out of their hands.

**Mr. Serge Imbrogno:** Their net revenue requirement would have been reduced by the Oakville gas management cost.

**Mr. Peter Tabuns:** That's right.



**Mr. Serge Imbrogno:** And it's the incremental amount.

**Mr. Peter Tabuns:** Yes, and we took on the risk for having it at this site much further east and at a much higher cost. That wasn't reflected on what they pay on a monthly basis. They got this huge plum. Why didn't anyone say, "Let's do a calculation; let's check with a comparator plant next door so that we can get the correct reduction in the monthly payments to TransCanada"?

**Mr. Serge Imbrogno:** But it was meant to keep TransCanada—basically, where they were in Oakville would have been in Napanee. So it would have been very difficult to reduce the net revenue requirement by the full amount in Napanee. It was the incremental that—

**Mr. Peter Tabuns:** So, you and TransCanada knew this was going to be a big number?

**Mr. Serge Imbrogno:** No, we didn't —

**Mr. Peter Tabuns:** If it's a small number—you took away the—

**Mr. Serge Imbrogno:** We took away what the Oakville number would have been that they built into their net revenue requirement—would have stripped that out. The incremental would have been what the additional amount would be for the OPA to pay through picking up the incremental amount. We didn't, at the time, have a good estimate of the incremental amount.

**Mr. Peter Tabuns:** When, frankly, ministers have said to us, "We reduced the monthly payments. That's how we covered these extra gas charges. That's how we covered the turbines," in fact, the reduction was only a small part of what the real cost was to Ontario.

**Mr. Serge Imbrogno:** The incremental would have been larger than—

**Mr. Peter Tabuns:** The reduction was only a small part of the cost to Ontario. Is that true or false?

**Mr. Serge Imbrogno:** Well, the \$210 million would have been taken out.

**Mr. Peter Tabuns:** That's correct.

**Mr. Serge Imbrogno:** The connection costs that were in Oakville and the gas management costs in Oakville would have been taken out. The incremental costs are a lot more in Napanee.

**Mr. Peter Tabuns:** Yes, they are, and we got stuck with them. It is true.

**Mr. Serge Imbrogno:** But I would just say that any other location that we'd move to had larger costs, and they would have been factored in as well.

**Mr. Peter Tabuns:** You could say many things. It's true that we got stuck with a very big cost here. We took on the risk, and TransCanada was relieved of a very expensive piece of risk. Is that true or false?

**Mr. Serge Imbrogno:** They would receive a reduced net revenue requirement, and the incremental amount would be passed through the rates.

**Mr. Peter Tabuns:** Mr. Imbrogno, I'm not trying to put words in your mouth, but when I ask if something is true or false and the numbers come down fairly clearly, it would assist all of us if you would recognize if something is true or false.

**Mr. Serge Imbrogno:** It's the way you frame the question. TransCanada itself doesn't make money on having the gas management costs passed through. It is an additional cost to the ratepayer, I would agree with you on that, and it's a larger cost than it would have been at Oakville.

**Mr. Peter Tabuns:** They had a big chunk of volatility taken out.

**Mr. Serge Imbrogno:** Relative to Oakville, it was a more known amount. They would have taken that risk at Oakville, and they would pass on that risk, I agree, in Napanee.

**Mr. Peter Tabuns:** And we got stuck with that risk. We assumed the responsibility for that risk.

**Mr. Serge Imbrogno:** Yes, the ratepayers assumed the responsibility for that risk; correct.

**Mr. Peter Tabuns:** The Auditor General said, "The province and the OPA agreed to an arbitration framework (for determining damages to be paid to TCE if no settlement was reached) that favoured TCE and waived the protections the OPA had on the Oakville contract...." Do you agree?

**Mr. Serge Imbrogno:** Sorry, was that in that auditor's report?

**Mr. Peter Tabuns:** Yes, it was. That's a quote from the auditor.

**Mr. Serge Imbrogno:** I'm not going to disagree with the auditor.

**Mr. Peter Tabuns:** So you agree. The auditor also said, "This arbitration framework clearly favoured TCE and gave it the upper hand in the negotiations for a project to replace the Oakville plant." Do you agree with the auditor's assessment?

**Mr. Serge Imbrogno:** So on the arbitration agreement—

**Mr. Peter Tabuns:** Do you agree with her?

**Mr. Serge Imbrogno:** I was just going to try to explain what my understanding of that is. It's that, in the arbitration agreement, the government would have agreed that the plant would have been built on the timeline. So the ability for us in arbitration to argue that the plant would have been built was not there—

**Mr. Peter Tabuns:** Do you agree with the auditor's assessment?

**Mr. Serge Imbrogno:** Yes.

**Mr. Peter Tabuns:** You do. Oh, good.

The auditor characterized the arbitration framework, saying that negotiators were told, "Ignore the force majeure provisions, ignore the fact that TransCanada Energy wasn't allowed to get their permits and approvals." So you take that away and now you're left with having to make a deal with no strength on your side."

Did you find that the promises or the limits put into the arbitration tied your hands in negotiations with TransCanada?

**Mr. Serge Imbrogno:** Well, it took away the ability for the arbitrator to rule on whether the plant would have been built or at what time frame, because the arbitration



agreed to certain dates. So the ability to make that argument was taken away.

**Mr. Peter Tabuns:** So you agree with the auditor.

**Mr. Serge Imbrogno:** Yes.

**Mr. Peter Tabuns:** Okay. The last time you were here, you weren't sure who had made the promise to make TransCanada whole. The auditor—

**The Vice-Chair (Mr. Phil McNeely):** Your time is up. The questioning is over.

**Mr. Peter Tabuns:** Thank you, Chair.

**The Vice-Chair (Mr. Phil McNeely):** I wish to thank the witness for being here.

We will recess now until 3 p.m. this afternoon.

*The committee recessed from 1006 to 1501.*

HON. LINDA JEFFREY

**The Vice-Chair (Mr. Phil McNeely):** Good afternoon. I'd like to welcome Minister Jeffrey to the table. You will be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Hon. Linda Jeffrey:** I swear.

**The Vice-Chair (Mr. Phil McNeely):** You will be given five minutes for your opening statement, Minister. Then we will start with questions from the opposition: 20 minutes and 10 minutes again this afternoon, a round of 20 minutes and a round of 10 minutes. You may proceed.

**Hon. Linda Jeffrey:** Thank you, Chair, and good afternoon, committee. I'm pleased to be here this afternoon to answer questions about what I know regarding the cancellation and relocation of the Mississauga and Oakville gas plants. I know this committee is doing important work and will hopefully bring forth constructive recommendations as a result of your deliberations. I'm pleased to explain my involvement in these files.

Let me begin by stating that I was not involved in the siting of either the Oakville or the Mississauga gas plant, nor was I involved in the decisions to relocate these plants. When the original decision not to proceed with the Oakville plant was announced in October 2010, I sat on cabinet as Minister of Natural Resources; however, at that point, I had not yet been asked to serve on treasury board.

During the 2011 election campaign while out canvassing, I heard that the Liberal Party had issued a press release stating that the Mississauga gas plant would be relocated if we were re-elected as government. To the best of my recollection, I first heard about this campaign commitment on the radio, like many Ontarians. What I can tell this committee is that this subject was not a top-of-mind issue in my riding. In fact, I don't believe it was ever raised at any of the doors I knocked on or during any of the public debates I took part in during the 2011 election campaign. Again, I was not part of the decision-making process to relocate the Mississauga plant, and as

the candidate for Brampton–Springdale, I would not have expected to be.

After we were re-elected as government in October 2011, there was a cabinet shuffle and I was appointed Minister of Labour and minister responsible for seniors. I was then asked to join treasury board. It was in this role that I was one of four ministers who, on September 21, 2012, was approached to sign a cabinet walk-around document which outlined the mandate for the Ontario Power Authority's—OPA—and the Ministry of Energy's negotiations with TransCanada Energy Ltd. for a commercial alternative to the Oakville plant site. I have a distinct memory of the day that I signed the document, because I remember officials from Cabinet Office calling numerous times throughout the day, trying to schedule a briefing with me.

In fact, we had to change where we would meet three times, until they finally managed to track me down after 5 o'clock at Brampton Civic Hospital near the emergency room, where my youngest son was being treated that afternoon. We found a small, quiet, private area where I could read the documents and speak to Cabinet Office staff. These officials handed me two documents, which I took the time to read carefully, and I remember asking a couple of questions. Our discussion lasted approximately half an hour, and once satisfied, I signed the minute.

I would like to remind the committee that, had we not engaged in negotiations right away, the province would have taken a significant risk. As this committee has heard, if Oakville's bylaws had been overturned by the courts, permits would have been issued and construction would have started. As you have heard from a number of witnesses, the attempt to negotiate was a prudent step, because if the contract was just torn up, which was the position advocated by the opposition parties, the cost to the province would have been significantly higher.

Let me close by saying that I know you have put in many, many hours of work, interviewed countless witnesses and reviewed thousands of pages of documents. The opposition, as is its right, demanded that we produce documents related to the relocation of the plants—plants that both the opposition parties agreed should not be built. I believe the former Premier's office acted in good faith while the relocation of the Oakville plant was being negotiated, but from this experience there are important lessons to be learned. Money is too tight for tax dollars to be spent in any way that does not benefit our economy.

I appreciate the leadership of Premier Wynne, who asked the Auditor General to examine the costs of relocating the Oakville gas plant, and based on her findings we are introducing new rules to make sure this never happens again. We need to ensure that we get the siting decisions right the first time.

Premier Wynne has also stated that she will be putting in place new rules that will limit political staff involvement in commercial third party transactions. I believe it's in everyone's best interest that this issue be addressed and that we have a full understanding of how to better ensure the appropriate placement of necessary energy infrastructure in Ontario going forward in the future.



With that, Mr. Chair, I'm pleased to take questions.

**The Vice-Chair (Mr. Phil McNeely):** Thank you, Minister. We'll start with Ms. MacLeod for the opposition.

**Ms. Lisa MacLeod:** Thank you very much, Minister Jeffrey. I appreciate you coming in and I do hope that your son is on the mend, feeling better, and that it wasn't too serious.

**Hon. Linda Jeffrey:** He's good, thank you.

**Ms. Lisa MacLeod:** That's great. I appreciated your statement and I appreciate your coming here today. I've always found you to be a good minister and one I could work well with, and I know that you'll be forthright in answering these questions.

In your preliminary statement, you had said that you read the documents carefully and that you asked a few questions, and then you were "satisfied" with the response. Before I get into the minute that you did sign, can you answer for me what those questions were?

**Hon. Linda Jeffrey:** I'm going from recollection. It was two years ago, but at the end of the day, I had had some sense of the fact that we were about to set out a mandate. I wanted to know the scope of the mandate, and generally I was reading the deck and looking at when they thought the negotiations would take place, how long they would take place and when we would expect a report back. They were of that nature.

**Ms. Lisa MacLeod:** What were the responses? Who would have briefed you at the time? Would it have been members of Mr. McGuinty's staff?

**Hon. Linda Jeffrey:** No.

**Ms. Lisa MacLeod:** Or was it cabinet staff?

**Hon. Linda Jeffrey:** There was somebody from energy—I cannot recall their name—and there were some cabinet staff that came. There was nobody from the Premier's office.

**Ms. Lisa MacLeod:** Did they explain to you what the scope of the mandate would be in terms of the negotiation?

**Hon. Linda Jeffrey:** What they explained to me was what the negotiating mandate was, what the upper limit was with regard to the negotiations, and that they were trying to provide an outcome that would cost less than an outright cancellation.

**Ms. Lisa MacLeod:** What did they say the upward limit would be at the time?

**Hon. Linda Jeffrey:** I believe it was \$50 million at the time.

**Ms. Lisa MacLeod:** Fifty million—that was quite wrong. In terms of the sunk costs, it was \$40 million, and then of course we look and it's well beyond that.

I also wanted to just correct with you one thing. You had indicated that we, in the opposition—I suspect that means the PC Party as well as the NDP—would have torn this up and it would have cost more. Of course, the Auditor General was here just two weeks ago to indicate to us that the decision to relocate plants from Oakville to Napanee actually was the bulk of the costs, and that for quite some time the government knew that it would

exceed the \$40-million price tag. They were saying that it could have been upwards of \$750 million or even over \$1 billion. I just want to point out to you that that was your government's decision and your government's decision alone.

But I'd like to go quickly back to the sense of the mandate. You indicated to me—you talked about the scope of the mandate. You also talked about the negotiations that would take place. To what extent did you ask and have those questions answered with respect to negotiations?

**Hon. Linda Jeffrey:** What I saw that was brought forward was the fact that commercially sensitive negotiations were going on and that we were to give the negotiators a scope. Actually, we got a much better deal than the \$50 million that went out for negotiation. The final agreement that we eventually got was a lower sunk cost and other costs that were less, so I think we were trying to negotiate with the company in good faith to try to find a better deal, and I think, ultimately, a better deal was reached.

1510

**Ms. Lisa MacLeod:** Do you actually think that this whole deal was a good deal for taxpayers and ratepayers?

**Hon. Linda Jeffrey:** I think what we know is that it was a very huge risk if we hadn't engaged in negotiations as early as we did, and we know that certainly there was great risk had we gone forward and allowed things to play out without having taken action.

**Ms. Lisa MacLeod:** But that's exactly opposite of what the auditor told this committee and what she revealed in her report. She actually said that, because of the stipulations and the bylaws and the complications that the city of Oakville was placing upon TransCanada with respect to any development there, had you waited it out and not made a political decision, the ratepayers and taxpayers could have walked away at zero cost. She further said that once you made the decision to cancel, the bulk of the cost of that \$1.1 billion would have come from the relocation to Napanee, which was over \$500 million. I guess I'm having a difficult time buying into the spin line that you think that this \$1.1 billion is a good deal for taxpayers when the auditor says it wasn't.

You have to keep in mind, too, that Serge Imbrogno—I can't say his name; I do apologize to him—claimed earlier today that they were talking of figures of \$700 million as early as December 2011. Somebody, I would have to say, would have had that information.

Let's be very clear: I'm looking at the cabinet minute that you signed. The cabinet minute you signed—annotated minutes, Treasury Board and Management Board of Cabinet meeting of Thursday, December 13, 2012—your name is the last one to have signed that cabinet minute.

Serge said to this committee today—the Deputy Minister of Energy came in here and said that you were talking of figures of \$700-million-plus as early as December 2011, a full year before you signed that cabinet minute, and you're telling me you were satisfied you



could get out of this for \$50 million when everybody knew that it was going to be more than \$700 million in the Ministry of Energy? You're telling me that somebody from the Ministry of Energy briefed you?

I'm asking you simply: What kind of questions did you answer, and did you feel at all that you had any sense of depth in this department, given the magnitude of what we now know to be a \$1.1-billion scandal?

**Hon. Linda Jeffrey:** There were a lot of questions in that statement, so I'll try and tackle a few of them.

Whenever I look at a cabinet document or I'm asked to sign off, I ask what I believe to be appropriate questions. This was clearly a small sliver of a very complex deal that was being discussed over a number of years. It was something that I believe had many moving parts. The part that I knew to be in front of me at that point was very commercially sensitive. I knew that the company was working very hard to have the bylaws overturned in Oakville in several different courts. I know that, had those bylaws been overturned, permits would have been issued and the construction would have started. So I think it was prudent to negotiate with the company on an alternative site. I think it minimized costs. I think all three parties agreed to cancel the plant. It wouldn't have gone ahead regardless of whether it was our government or any other government, and certainly there were going to be costs associated with it. It was better to negotiate and find an outcome that both sides could agree to.

Ideally, those plants wouldn't have been sited in those locations, but I think certainly Premier Wynne has addressed that. We appreciate the work that the Auditor General has done in going back and evaluating what steps, what actions, were taken. Hindsight is helpful in this position, but at the time, that appeared to be the least cost-prohibitive approach. My decision was based on advice given to me by the Ministry of Energy.

**Ms. Lisa MacLeod:** But it's clear, even in confidential advice to cabinet at the time, that there would be other financial arrangements associated with the terms sheet. It's clear that the Ministry of Energy, as indicated this morning in this same committee, was aware that they were talking in terms of \$750 million at the time. It's clear, and I'll use your words, that this is not "a small sliver" of a complex deal; this is a major, major issue in a complex deal.

You signed a document, along with several of your colleagues. Mr. Duncan, who will be before this committee, Mr. Bartolucci, Ms. Broten, Mr. Chan and yourself signed a document that allowed TransCanada to enjoy benefits in order for them to become whole at the expense of the ratepayer and at the expense of the taxpayer.

I'm going to ask you this, because I'm not confident that you either received a full briefing or you understood the complexity of this at the time. Again, I have the highest respect for you, but I must think of the people in my riding who are at home wondering why they're stuck paying for this mess. Do you think that the ministry deliberately hid information from you when you signed the document, or do you think that when you read this

complex minute you had difficulty understanding the terms? I mean no disrespect to you. It is very hard for me to understand why you think a \$1.1-billion boondoggle is good for the taxpayer and why you would sign this cabinet minute based on the information that you had.

**Hon. Linda Jeffrey:** I think that when we were in the midst of having these conversations, either in cabinet or when I was briefed by energy in Brampton that summer afternoon, I knew that we were following through on a public commitment to relocate the plant. We had made the commitment two years prior and, based on the advice I received from the Ministry of Energy, I felt that, rather than rip up the contract and pay money for no power to be produced, the negotiations that were being led by OPA and energy were a more prudent route to go.

I appreciate that you think I may not have asked the right questions. At the end of the day, you rely on the expert advice you receive from the Ministry of Energy officials. You attempt—as I think all members around this table do—to conduct yourself thinking about the taxpayers and thinking about how to best use taxpayers' dollars. I believe that, as a government, we made the commitment to follow through, and no matter who had been in government following the election, all three parties committed to cancelling this plant. So the negotiations were something that all three parties would have assumed costs for following the election.

We happened to be the government, and certainly I think, ideally, the sites would not have been chosen that were, but they were and we were tasked with the responsibility of finding another way to minimize the outcome that we had.

**Ms. Lisa MacLeod:** I guess I do take issue, and I'll continue to take issue, with the fact that all three parties would have done the same thing. The Auditor General even came to this committee and told the public that that is simply not the case. The Auditor General said it was a political decision for a bulk of those costs to have been made to move to the Napanee area, to that part of eastern Ontario. She also indicated to us that there were enough obstacles in place by the city of Oakville that we could have had that terminated, had we waited it out, at limited if no cost to the taxpayer. So I do take exception to that, and I'll continue to reiterate it as long as you're prepared to continue to put it on the record.

But it does speak to something: You say to me that you rely on the ministry officials and their expertise, and then you tell me that you're comfortable with the information they provided you. We had—and I'll go back to this—the ministry official, the chief bureaucrat, the Ministry of Energy deputy minister in here today, who said they were talking figures of \$700-million-plus as early as December 2011, a full year before you signed the cabinet minute. I'm going to be honest; I have to go back to my earlier question. You either accepted their explanation and they misled you or—

**Mr. Bob Delaney:** Chair?

**Ms. Lisa MacLeod:** —let me finish—or you didn't understand the implications, neither of which is flattering for your government—



**Mr. Bob Delaney:** Chair, a point of order.

**The Vice-Chair (Mr. Phil McNeely):** Mr. Delaney.

**Mr. Bob Delaney:** Chair, you cannot say in committee anything you cannot say in the House. Perhaps the member would wish to rephrase the question she is asking the witness.

**Ms. Lisa MacLeod:** No, thank you. I don't. I think that it stands. I think that the ministry was either deliberately hiding information to force you to sign the document or—

**Mr. Bob Delaney:** Chair, that question is out of order.

**The Vice-Chair (Mr. Phil McNeely):** You were outside the limits a bit of parliamentary language. I'd just like you to rephrase your question.

1520

**Ms. Lisa MacLeod:** And which was it? Was it “deliberate” or “misleading”?

**The Vice-Chair (Mr. Phil McNeely):** I think both.

**Ms. Lisa MacLeod:** Okay.

**Mr. Gilles Bisson:** “Deliberate”?

**Ms. Lisa MacLeod:** “Deliberate” is now unparliamentary language?

**The Vice-Chair (Mr. Phil McNeely):** Well, let's say at least “misleading” is, but put the two together and they're both not suitable for the questioning.

**Ms. Lisa MacLeod:** Okay. Well, at some point, when you signed the final deal in December 2012—

**Mr. Gilles Bisson:** Just on a point of order. Excuse me. Just in your defence, the member from Ottawa-Nepean did not say that the minister was misleading. She said that the staff at the ministry were either misleading you—she was not aspersing anything against her. I don't see how that's out of order.

*Interjection.*

**Ms. Lisa MacLeod:** I appreciate the objection from my colleague from the third party because I think that it does stand. He understands where we were going with that.

But having said that, at the point when you signed the final deal in 2012, when as far back as December 2011, a year before, when the Deputy Minister of Energy is telling us that they knew the cost was well over \$750 million—did you at that point know that the cost was higher than \$33 million, as the Premier said in this committee and in the House?

**Hon. Linda Jeffrey:** I would say that the knowledge that I had was that I expected that there would be future costs because I knew the negotiation was something that was ongoing. I did not know what the number was going to be, and I would say that any knowledge I had came from the then ministry officials or the Minister of Energy.

I have to be honest. As I said in my opening comments, this was not my file. It was not an issue that presented in my riding either before or after the election. It was not an issue, and certainly when it first—the issue not to proceed with the Oakville plant—I was then Minister of Natural Resources. I don't know if you recall, but I had to go back through my notes to figure out where I

was at the time to come to this committee, and I was dealing with more fires in northern Ontario than had ever been seen in probably a decade. So I was travelling around the province. This was not an issue that I was focused on. I relied on the advice of ministry officials and certainly saw updates as the negotiations progressed, but as I said, when I was asked to sign the walk-around, it was for a negotiating mandate to try and minimize the cost that would be associated with the cancellation—

**Ms. Lisa MacLeod:** So were you too overwhelmed to do your job?

**Hon. Linda Jeffrey:** I'm telling you that this was an issue that I was certainly aware of through cabinet, but it was not my file. It wasn't one that I had the intimate knowledge—working—as I don't for many issues that come to cabinet. There can be seven or eight issues that come to a cabinet meeting that you are given updates on, but don't have to make any decisions. So I would say that it is something that I rely on ministry officials to provide context and detail about, and you're able to ask questions, but I trusted the advice and guidance of ministry officials and people from OPA.

**Ms. Lisa MacLeod:** So you said you had expected “future costs.” What were those expected future costs and how much did you expect them to be, or did you not think about it when you signed the document?

**Hon. Linda Jeffrey:** What I believe would be that there would be future complex negotiations going forward. I knew this was the beginning of the conversation. That was my expectation, but I had no idea as to what the numbers would be.

**Ms. Lisa MacLeod:** I'm really going to stick on this point for one second and then we'll move on to another point. You're talking about future negotiations. You are acknowledging that it was at least going to cost \$50 million. You didn't pay a lot of attention because you had other issues in your community. I'm just wondering why you would decide to sign that cabinet minute.

Even if it were just the simple fact that it could cost \$50 million alone, people in the public, people outside this building—I think it's a lot of money, and someone's going to have to pay for it. It just seems to be very cavalier of an attitude to say, “Okay. Well, it's only going to be \$50 million, but then I expected there would be future costs, but I didn't know what they were.”

I'm having a real difficult time, and I'm hoping you can explain yourself with that reasoning.

**Hon. Linda Jeffrey:** Ms. MacLeod, I didn't say that I didn't care about this issue, so I would challenge you on that point.

I would say that any information I received on costing was provided to me by the Ministry of Energy. I understand they received those numbers from the OPA. Certainly there has been testimony and thousands of documents that you've received that have proven that the cost estimates that were provided to us and to cabinet were signed off by OPA.

I know it was a very complex issue; it was hard to estimate for many groups. I'm grateful to the auditor for



having provided the review—both auditors for the reviews that they provided. But at the time, all I was asked to sign off on was a negotiating mandate. It's a lot of money and certainly, in retrospect, we know now that the auditor has given us some advice, which I believe that the Premier has acted on very swiftly. These are tight times; tax dollars are tight. We always want to spend them properly. But I guess I believe that these were complex negotiations and we did the right thing going forward to find a way to negotiate our way out.

**The Vice-Chair (Mr. Phil McNeely):** Time is up. We'll go to the third party and Mr. Bisson.

**Mr. Gilles Bisson:** Thank you very much. First of all, just a response to something you said, then I've got a series of questions.

You said in your comments that the three parties had said that they would cancel these gas plants and rip up the contracts. I just want to be really clear: We would have never built that gas plant in the way that you guys did. We would have done it under a public power of ownership, never under the ownership model that you put forward.

The other thing is—Andrea Horwath was quite specific in that election and I remember well, as I was co-chair of the campaign and this was a discussion that the co-chairs and parts of our campaign had talked about—that we would in fact not scrap contracts unseen. If you remember, there was some question as to Samsung contracts being ripped up on the part of the Conservatives, and we thought it wasn't responsible to start talking about ripping up contracts in the middle of a campaign that you haven't had a chance to see or understand what the cost might be. So I'll just put that on the record.

I just want to go back to this cabinet document that you signed. When you got briefed in regard to this particular issue, I take it there was more than one briefing. By the time you signed the cabinet document, there was other discussion about this prior to the signing, the day that you signed?

**Hon. Linda Jeffrey:** I'm going to go back to what you said about how you would have done it differently, and I appreciate that you have that perspective now. But I guess in my riding during the election, I actually heard NDP candidates throughout Peel saying the opposite. I don't know that the candidates and the leader were on the same page with regards to the gas plants. So I believe that there were candidates out there indicating from the NDP that they were actually going to rip up the contracts and that we were all—

**Mr. Gilles Bisson:** You should have heard what the Liberal candidates said back home.

**Hon. Linda Jeffrey:** At the end of the day, we can agree to disagree, but I think that that was a perception, so—

**Mr. Gilles Bisson:** Listen, the facts are that our leader, Andrea Horwath, had said she would not scrap contracts unseen. But anyways, that's just a minor thing.

My question to you is: Did you have any briefings prior to the signing of the cabinet document by whom-ever?

**Hon. Linda Jeffrey:** I was appointed to cabinet in January 2010 and I guess there was probably an original briefing in the fall, and then there was one in the summer. So there were probably updates more than briefings. I would say that they were opportunities when staff came in and gave you an update as to where the—

**Mr. Gilles Bisson:** As to the cancellation.

**Hon. Linda Jeffrey:** As to the cancellation, there were probably two or three briefings.

**Mr. Gilles Bisson:** In other words, when it came to you signing that document, it wasn't as if this sprung out of nowhere and you didn't know what it was all about. You had been briefed; you understood what this was all about.

During those briefings or at the time you signed the document, did anybody raise the issue of the force majeure part of the contract or allowing it to extinguish—  
*Interruption.*

**Mr. Gilles Bisson:** What was that? It almost sounded like a dog out there. Anyway, sorry, I was distracted with the noise out the window.

At the time of the signing or prior to it, did anybody come to you as a cabinet minister or on this particular cabinet committee to say, "By the way, the other option is we could allow the contract to expire and we would not be in a position of having to spend a lot of money"? Did anybody come out and say that?

**Hon. Linda Jeffrey:** I don't recall that conversation. I knew it was a complex and commercially sensitive negotiation. I knew that if we released any details prior to it being finalized, then it would have jeopardized our negotiating position. I think that was why we worked so hard to, we believed, protect the public interest.

1530

**Mr. Gilles Bisson:** Arguably, you took the most expensive route, so I don't know if that did you any good.

So the answer to my question is that nobody had come to you and said, "There is actually force majeure within this contract. If we don't do anything, the thing would expire. One of the options is to do nothing, allow it to expire." Nobody ever came up and raised that point?

**Hon. Linda Jeffrey:** Mr. Bisson, I would challenge you on arguing that we took the most expensive route; I would argue that we didn't. Really, you won't know that, because we were able to negotiate a deal. Had we not gone to a deal, and had the contract been ripped up, we would have been in a position of being sued. I think that any time you decide to go to court and someone sues you—

**Mr. Gilles Bisson:** I'm not arguing about ripping up the contract.

**Hon. Linda Jeffrey:** —you are in a more risky position than you would be if you had negotiated something.

**Mr. Gilles Bisson:** The auditor was quite clear and categorical in her report that the government had an option and didn't follow it. Instead, they decided to make TransCanada Energy whole.

But anyway, the answer to the question I was asking, and I just want to be clear: Did you or did you not get a



briefing from somebody within government, from OPA or from anywhere in regard to an option that would essentially allow the contract to expire as a way of being able not to be on the hook for a lot of money?

**Hon. Linda Jeffrey:** The conversation I recall was that a decision had been made to negotiate with the proponents. I was not apprised of any other choices. The decision had already been made by the time I saw it.

**Mr. Gilles Bisson:** Was there any conversation about why you decided to make TCE whole? At cabinet, did you guys discuss that?

**Hon. Linda Jeffrey:** That conversation did not take place while I was in the room.

**Mr. Gilles Bisson:** At any time there was no conversation in cabinet in regard to—

**Hon. Linda Jeffrey:** I don't recall that. I think we discussed the fact that if we ripped up the contract, as the opposition advocated, the company would have sued us, and we believed the province would have been paying a higher cost.

**Mr. Gilles Bisson:** Okay. That's fair enough, but that's not my question.

**Hon. Linda Jeffrey:** I understand that, but that's what I recall being the conversation.

**Mr. Gilles Bisson:** So in regard to making them whole, were there any discussions you remember that ensued at cabinet or within government in regard to why you decided to make them whole?

**Hon. Linda Jeffrey:** There were no conversations that I attended.

**Mr. Gilles Bisson:** Okay. There was also some question that possibly, with the cancellation of the plant, it would be moved to Brampton. Were you aware of that? It was one of the options.

**Hon. Linda Jeffrey:** I have never heard that.

**Mr. Gilles Bisson:** Okay. That was one of them. So you never heard. That's interesting. I'll let my colleague follow up on that one.

Let me switch tracks a little bit here. On May 14 last year, or the year before, when the estimates committee asked for the documents, were you part of any discussion at any time in regard to the logic of why you would not be releasing these documents to the committee?

**Hon. Linda Jeffrey:** I don't recall us not providing documents. I believe, to the best of my ability, that when this conversation originally took place, when it first came to our attention, there was some commercial sensitivity to some of the documents being released. Mr. Bentley indicated at the time that it wasn't a matter of if the documents were going to be released; it was when they were going to be released. In order to protect the commercially sensitive conversations that were taking place, some of the details needed to be held back until those conversations were complete.

**Mr. Gilles Bisson:** And that discussion was at cabinet, I take it?

**Hon. Linda Jeffrey:** I guess the first time I recall, those conversations were in the House.

**Mr. Gilles Bisson:** Did you guys have that discussion at cabinet?

**Hon. Linda Jeffrey:** I don't recall that conversation taking place.

**Mr. Gilles Bisson:** So the committee requested documents. Were you aware that a committee has the right to request documents?

**Hon. Linda Jeffrey:** Yes.

**Mr. Gilles Bisson:** Did it strike you as strange that the government was taking a position of not releasing those documents?

**Hon. Linda Jeffrey:** When I heard Minister Bentley talk about the commercial sensitivity to the negotiations, I understood that he was trying to protect the public interest and that he was co-operating to the best of his ability. That's what I understood.

**Mr. Gilles Bisson:** Did you have any discussions with anybody in regard to the strategies of the government to filibuster the estimates committee? Just to refresh your memory, when the request was moved in order to be able to request the documents, the government filibustered those motions for I can't remember how many days but quite a few days. Were you aware that there was an attempt on the part of the government to filibuster the estimates committee at the time?

**Hon. Linda Jeffrey:** No, I don't believe that was the case. At the end of the day, my understanding was that at the time the documents were asked for, Minister Bentley stood in the House on numerous occasions and indicated that there was—he brought forward concerns that many of these documents could potentially negatively impact and violate solicitor-client privilege. I think that those were commercially sensitive documents. He was trying to protect those ongoing negotiations. I think he struggled with trying to be open and transparent, as is his practice, in my experience. I appreciated that he was trying to comply, but also understood that he was in the midst of very technical negotiations that needed some amount of time.

**Mr. Gilles Bisson:** Are you saying it was his decision alone not to release those documents?

**Hon. Linda Jeffrey:** I believe that the minister and certainly the Premier were the people making the decisions. Certainly they were having conversations with regard to the negotiations, and likely they made those decisions.

**Mr. Gilles Bisson:** Did any of those discussions happen at cabinet?

**Hon. Linda Jeffrey:** Not to my knowledge.

**Mr. Gilles Bisson:** Again, to refresh your memory, what actually happened was, originally, when the request was made at the committee, the minister took the position of not releasing them. It wasn't until sometime after that the government twigged into that they had to release them, and that's when the filibuster happened. I don't remember how many days, but the Clerk might remember. There were a number of days where there was an attempt on the part of the government—and rightfully so; that's their right as a government, as the opposition or the



government has the right to try to amend motions and stuff. I get that. But there was a clear attempt on the part of the government not to release those documents, and you're saying that never did any of you talk about this at cabinet?

**Hon. Linda Jeffrey:** I think the only time we even touched close to this area was to talk about the commercial sensitivity and the solicitor-client privilege that was contained in documents that were being requested. Minister Bentley worked very hard to provide as much clarity as he could, and I think he was willing and wanted to provide as much clarity as possible, but also did not want to endanger or put in jeopardy any of the conversations he was having.

**Mr. Gilles Bisson:** So there was some form of conversation at cabinet, then, in regard to this.

**Hon. Linda Jeffrey:** I think he just explained that there were ongoing conversations that were very technical and solicitor-client privileged. He didn't speak to the documents, but I think it was clear to us that it was a time when he was unable to provide too much clarity even to cabinet at that time because of the negotiations.

**Mr. Gilles Bisson:** So there was some conversation but not a lot of detail—that's kind of what you're saying.

**Hon. Linda Jeffrey:** Yes.

**Mr. Gilles Bisson:** Who else would have been involved in this whole move on the part of the government—I'm trying to say this in the least negative way possible—to hold up the documents that were being requested by the committee? The Premier, the Minister of Energy—was anybody else involved?

**Hon. Linda Jeffrey:** I have no idea who—

**Mr. Gilles Bisson:** The House leader's staff, House leader, whip?

**Hon. Linda Jeffrey:** I have no idea who was involved. At the end of the day, what I know about this file is what was presented to me by the ministry and the Minister of Energy, and any of the OPA officials who accompanied him to any cabinet meetings. But what I knew about what was going on in negotiations were those and anything I read in the paper.

**Mr. Gilles Bisson:** Okay. I'm going to reserve the rest of the time for my colleague, if you don't mind—you can switch over. Can I just save what we've got now? Because my colleague had some questions.

*Interjection.*

**Mr. Gilles Bisson:** Could we? Because Peter had some questions, and I just need to save him a bit of time.

**The Vice-Chair (Mr. Phil McNeely):** Does the committee agree with—

**Mr. Gilles Bisson:** We'll just lump whatever time we have in our last rotation.

**The Vice-Chair (Mr. Phil McNeely):** Reserving eight minutes?

**Mr. Gilles Bisson:** Yes. Just lump it into the 10 minutes at the end. I would ask, I would move that we lump the remaining eight minutes over to the last 10 minutes, in order—

**The Vice-Chair (Mr. Phil McNeely):** All those in favour of him reserving eight minutes?

**Mr. Bob Delaney:** What we would be asking for here would be unanimous consent, which would be required to override the subcommittee report, correct?

**Mr. Gilles Bisson:** No, I can move a motion. It's a simple motion.

**Mr. Bob Delaney:** Now, hold on. Just hold on.

**Mr. Gilles Bisson:** It's not an unreasonable request.

**Mr. Bob Delaney:** No, I'm not saying it is.

**Mr. Gilles Bisson:** Look, he's over there on TV, speaking in the House.

**Mr. Bob Delaney:** No, we get that. I understand what you're asking.

**The Vice-Chair (Mr. Phil McNeely):** Okay, through the Chair, here. You're saying it's unanimous—

**Mr. Bob Delaney:** No. What I'm asking, Chair, is—my understanding, then, is that the member is asking for unanimous consent to override the subcommittee report one time to use—on this one occasion, to add his remaining time to his second round. Is that correct?

1540

**Mr. Gilles Bisson:** We can do it by motion—

**The Vice-Chair (Mr. Phil McNeely):** Mr. Bisson, is that what you're asking?

**Mr. Gilles Bisson:** Are you agreeable to unanimous consent?

**Mr. Bob Delaney:** Yes.

**Mr. Gilles Bisson:** Okay, fine. Let's do it that way.

**The Vice-Chair (Mr. Phil McNeely):** Is everybody agreeable?

**Interjection:** Sure.

**Mr. Gilles Bisson:** I appreciate that. Thank you.

**The Vice-Chair (Mr. Phil McNeely):** We'll go to the government, and you'll have 20 minutes; we'll reserve eight.

**Mr. Bob Delaney:** Okay, thank you. Minister, welcome. It's good to see you. I'm not completely sure why you're here, but nonetheless. As the opposition has admitted, it's not unusual for a cabinet officer to sign off on a mandate for this type of a negotiation, and in approving the negotiation mandate, cabinet was in fact following through on a public commitment to relocate that Oakville plant, and that commitment was made in 2010, some two years before you had that minute, so it had been two years at that point.

Just to recap: Rather than rip up the contract and pay more money for no power, the province chose to relocate the plant so that there would actually be a benefit to the energy system, which is why the negotiations were taking place during that summer of 2012. The testimony that we've heard and the documents that we've seen made it clear that the negotiations were in fact taking place by experts in the OPA, who assured the government that they were working hard to negotiate the most commercially reasonable deal.

My understanding from your description is that you signed off on the upper limit of the negotiation mandate and, ultimately, those things that were being negotiated came in at a lower cost than what was authorized in the mandate. Is that correct?



**Hon. Linda Jeffrey:** Yes. The recommendations were the negotiating terms of up to \$50 million to cover TCE's sunk costs incurred on the Oakville generating station, and the breaking fee was up to \$100 million. In fact, when the negotiations came back, the final agreement, which was announced a few days later, was actually a lower sunk cost, a lower NRR fee and a lower break fee. So I think it was a better outcome. It wasn't ideal, at the end of the day, had these locations been sited better, which is something the Premier has talked about. It was a better deal. We believed that had we ripped up the contracts and cancelled them completely, we would have been sued, and we believe the costs would have been significantly higher.

**Mr. Bob Delaney:** Again, just to recap, at this point in the summer and the fall of 2012 when the deals to relocate the two plants were being finalized, your cabinet portfolio was—

**Hon. Linda Jeffrey:** I was the Minister of Labour, and at that point I had joined treasury board.

**Mr. Bob Delaney:** And the Ministry of Labour was not involved in the decisions regarding the Mississauga and Oakville power plants?

**Hon. Linda Jeffrey:** Not at all.

**Mr. Bob Delaney:** As a minister in a cabinet in 2011, I assume that you paid close attention to the policies and positions of your counterparts in the election.

**Hon. Linda Jeffrey:** Yes.

**Mr. Bob Delaney:** So you then would have been fully aware that the other candidates all through Peel region were all committed to cancelling the Oakville and Mississauga power plants.

**Hon. Linda Jeffrey:** Yes. After we made our announcement, it seemed to be a good idea by the opposition, and really, they made the right decision as well, I think. It was a better decision that all three parties agreed on and, at the end of the day, we became government following that election and had to implement a promise that we had made to the residents, certainly, in Oakville and Mississauga.

**Mr. Bob Delaney:** The mayor of Oakville, Rob Burton, was here on March 19 and he told us—let's use some of his words: "Our citizens ... won promises from all parties to stop the proposed power plant." He then met personally with PC leader Tim Hudak, whom Mr. Burton said expressed "support for the path that the community was on."

My question to you then: At that time, in the election of 2011, both opposition parties opposed the Oakville plant. Do you recall any of your opposing candidates saying how much their commitment would cost?

**Hon. Linda Jeffrey:** I think that was the most interesting part of the conversations that I watched in the media. Certainly as I stated in my opening comments, this was not an issue that resonated at all in Brampton, to my recollection, but I would say that I watched with interest what was going on in other parts of Peel, because obviously I have an interest in what goes on in the region. I thought it was a very easy statement to make

during the course of the election that you're going to cancel it but not to attribute any costs to it.

There's no magic to these negotiations. You have to have some difficult conversations about what those costs are going to be. We were prepared to do that, and certainly it became clear when we came back from the election that we had to do those negotiations, and that's what we did.

**Mr. Bob Delaney:** Mayor McCallion testified that regardless of who won the election, in her words, "I think all parties would have cancelled it," in this case referring to the Mississauga plant. We have transcripts and campaign literature and robocall scripts that highlight these comments and commitments made by both opposition parties.

With regard to the opposition plan, do you ever recall any opposition candidate saying how much their commitment would cost?

**Hon. Linda Jeffrey:** I don't recall that, but I do recall some of the comments that Mayor McCallion says—she says what she thinks on a regular basis because I see her monthly at my AMO MOU table. She's a pretty candid speaker. She spoke very candidly, I recall, at an event that I was at during the course of the election. She spoke about this issue in great detail, unsolicited, about how pleased she was with what the government had committed to with the cancellation. So I appreciated her speaking in detail about it, but I don't recall any candidate speaking in any detail on this issue.

**Mr. Bob Delaney:** Yes. Mayor McCallion is my constituent. I understand.

With regard to the final deal to relocate the Oakville plant to Napanee that was announced on September 24, 2012, when it was announced the Ontario Power Authority published the final memorandum of understanding and a news release on their website that stated, "The cost of TransCanada's plant at Lennox will be comparable to the cost of the original competitively procured Oakville plant," and specified that the sunk cost was \$40 million. The OPA testified here at the committee that at the time the deal was announced, the future cost and savings estimates were unknown. Colin Andersen, the OPA's CEO, said as much, and he also said:

"It's true that the \$40-million number was the one that was used at the time of the announcements because it was the one that was very crystallized, if you will, at that point in time."

"There were other elements that were noted ... but none of them had a number attached to them at that point in time."

Similarly, OPA chair Jim Hinds said much the same thing. So at that time, would you agree that the OPA's costing that was available when the memorandum of understanding was signed was what had been provided to the public?

**Hon. Linda Jeffrey:** I think that's all we had to rely on at that point. I think there were a lot of estimates and I think certainly the Auditor General has—both Auditors General have provided clarity on what costs were



assumed, and really estimates as to what the cost will be in the future. Based on the information we had at the time, I would agree with you.

**Mr. Bob Delaney:** Okay. Again as a member of cabinet, let's just talk briefly about the many steps the Premier has taken to be open and transparent on the relocations of both facilities in Mississauga and in Oakville. As a quick recap, the Premier ordered the full disclosure of documents, wrote to the Auditor General, re-struck the committee. At this point, we've heard from 64 witnesses, some 95 hours of testimony, and the government has provided more than 175,000 documents and emails—by a long shot, the most open process in the province's history. The Information and Privacy Commissioner has credited the government for implementing important record-keeping reforms and staff training. The Auditor General stated last week that the Premier is “changing ... the way things are going to be done in the future so that a situation like this doesn't evolve.”

Did you have any personal opinion about all of these steps?

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**Hon. Linda Jeffrey:** I was very proud when Premier Wynne committed to getting all the information on the two gas plant relocations, and I was glad that she brought the House back so quickly. I'm glad that she expanded the mandate of the justice committee, and I am glad that she asked the Auditor General to examine the costs. I think that those were important steps that gave the public confidence that we were open and transparent. Certainly there have been a lot of documents provided to the committee, which I think is a good thing. There have been many witnesses here who have provided clarity as to what we should do.

On the Information and Privacy Commissioner work, my own staff have been through some training in records retention and awareness. I think that only improves all of the work that we do on an ongoing basis. That's a positive step, to make sure that our political staff are aware of their responsibilities. It demonstrates that our government is serious about record-keeping, and our government is serious about making sure that all the facts are made available.

**Mr. Bob Delaney:** And just for clarity, when you said that Minister Bentley and the Premier were the ones who decided about the documents, as Minister of Labour at the time you personally were not involved in those conversations, correct?

**Hon. Linda Jeffrey:** No, I was never involved in those conversations.

**Mr. Bob Delaney:** Okay. In May 2012, when the estimates committee passed a motion by Mr. Leone asking for all correspondence within a specific time frame from the Minister of Energy, the Ministry of Energy and the OPA related to the two gas plants in Mississauga and Oakville, at that time complex and sensitive negotiations were going on with both proponents.

We've asked many witnesses at the committee pretty much the same question: What would have happened if,

as the opposition was demanding—we say recklessly—commercially sensitive information had been made public prior to the point where negotiations had been finalized?

**Hon. Linda Jeffrey:** Well, I'm speculating at this point, but I believe it would have been very dangerous and reckless. As I said earlier, these were commercially sensitive documents with client-solicitor privilege. I think it was something that Minister Bentley spoke about a number of times in the Legislature, that to disclose that information would have put us in jeopardy and I believe would have cost us significantly more money in the long run.

At the end of the day, these were sites that we believed should be relocated to another part of Ontario because we needed the energy. I think any time you can negotiate a solution, that's always a better outcome than being taken to court and sued.

**Mr. Bob Delaney:** Thank you. I think every single witness has responded that it would have put the province at a huge disadvantage because its negotiating position would have been prejudiced. Would that accurately encapsulate it?

**Hon. Linda Jeffrey:** Absolutely.

**Mr. Bob Delaney:** Part of the committee's job is to review some of the allegations made by the opposition against former energy minister Chris Bentley around the suggestion that he was in contempt with the disclosure of these commercially sensitive documents. When we asked Mr. Bentley about the very difficult situation that he was in in terms of disclosing documents versus protecting the public interest, the former energy minister testified—and I'm going to use his words—“producing the documents and discussing our ongoing negotiations at that time would have significantly hurt our ability to limit the costs of the cancellations and negotiate a relocation and would have increased the cost to the people of Ontario. Having said that, I always intended to produce the documents. It was a question of when, not if.”

I'm just wondering if you could share with the committee your views on the allegations made against Mr. Bentley and whether you felt that Mr. Bentley had acted in any manner other than in the public interest?

**Hon. Linda Jeffrey:** I recall that time in the Legislature as being one of the most unpleasant that I participated in. I found that Minister Bentley was doing his best to navigate through an extraordinarily difficult time: on the one hand, negotiating something that was commercially sensitive and, at the same time, being personally attacked in the Legislature. It was a very toxic environment and I think that, I know that Minister Bentley—when I first met him, I remember being impressed with his values. I thought he was an individual who certainly had the public interest at heart. He worked very hard to try and manage this file and provide as much clarity as possible. Certainly, I think that he always had the public interest at heart. It was never his intention to withhold the documents. It was a matter of when he was going to release those documents. Certainly, I never saw anything that would have me believe otherwise.



**Mr. Bob Delaney:** And, I guess, if I could add personally, he was a deeply honest and honourable man.

Chair, I think we're done for this round. Thank you.

**The Vice-Chair (Mr. Phil McNeely):** We'll go now to the opposition. You have 10 minutes left.

**Mr. Victor Fedeli:** Thank you, Chair. I appreciate it. Welcome, Ms. Jeffrey.

**Hon. Linda Jeffrey:** Thank you.

**Mr. Victor Fedeli:** I have two different lines of questioning. I want to pick up, actually, where Mr. Bisson basically left off. On page 10 of the document that you signed—the slide deck—the cost recovery where it says, “Other financial arrangements associated with the term sheet would be the responsibility of the OPA.” You yourself acknowledged, “I had knowledge that there would be expected future costs.”

Just to start the conversation all over that you finished with Mr. Bisson, you acknowledged, then, that you knew, when you signed the document, that there were up to \$50 million in, it called it relocation costs—we hadn't heard that words “sunk costs” yet—and a break fee as well. But, in addition to that, you had knowledge that there would be expected future costs. Would you acknowledge that?

**Hon. Linda Jeffrey:** What I would acknowledge is that I was briefed by the appropriate staff in the Cabinet Office and representatives from the relevant ministry. I think that I learned that they were working hard to negotiate something that was commercially reasonable. I think that certainly it was clear to me that if you didn't rip up the agreement, you had to find a way to negotiate going forward.

Again, what I saw that day that I signed the walk-around document was a negotiation mandate that would be coming back for an update to cabinet. So I would have expected the numbers to change, but I knew what the high end of those negotiations was the day that I signed it. But I certainly expected that this was a file that wasn't going to be resolved easily because of the public interest in the file and certainly the fact that we were trying to negotiate a reasonable commercial deal.

**Mr. Victor Fedeli:** So you told Mr. Bisson that you had knowledge that you expected future costs. Are you changing that now?

**Hon. Linda Jeffrey:** What I'm saying is, it was something that—

**Mr. Victor Fedeli:** You've already said it: You had knowledge that there would be expected future costs.

**Hon. Linda Jeffrey:** I would say that, Mr. Fedeli, what I believed to be something that would be coming back in the future was something of my own knowledge. It wasn't conveyed to me in the course of the briefing, but I would have expected the deal to come back, and that there would be more costs associated in the future.

**Mr. Victor Fedeli:** Okay. You also have said a few times that you were briefed by ministry officials as well as cabinet officials—

**Hon. Linda Jeffrey:** Cabinet Office, yes.

**Mr. Victor Fedeli:** Cabinet Office officials. They told you a few things. You said something about, “If we ripped up the contract.” I wrote “ripped up the contract.” I think you've said that two or three times. Am I correct in that?

**Hon. Linda Jeffrey:** Yes.

**Mr. Victor Fedeli:** So, without seeming too blunt, is that a talking point or did somebody actually say that to you, “If we rip up the contract, it will cost?” Did somebody actually say that or is that today's talking point? I don't mean to be blunt or rude when I say that; I just need to get it clear.

**Hon. Linda Jeffrey:** I don't recall getting any talking points on this particular item. All I know is when you cancel a contract, you rip it up and you start over, or you go to court.

**Mr. Victor Fedeli:** Did somebody tell you that?

**Hon. Linda Jeffrey:** I assumed that when I heard the opposition talk about this in the media, that was—

**Mr. Victor Fedeli:** No, no, no. This is going back. I'm going back. You said that when you signed that document, the ministry officials briefed you and said, “If we rip up the contract, it will cost more money.” Are you saying that's not accurate?

**Hon. Linda Jeffrey:** Are you asking me about the time that I signed the walk-around?

**Mr. Victor Fedeli:** Yes.

**Hon. Linda Jeffrey:** We did not talk about that portion of the deal. That day was only to discuss the mandate for the negotiations.

**Mr. Victor Fedeli:** So you went ahead and signed a \$700-million deal. Earlier you said you had a briefing. Was there no briefing? Did you sign it without a briefing, or were you briefed?

**Hon. Linda Jeffrey:** I was briefed by some staff in the Cabinet Office and representatives from the Ministry of Energy.

**Mr. Victor Fedeli:** And when you were briefed, did they tell you—according to the Auditor General, on page 9, I'll read what she said: “The contract for the Oakville plant contained protection to relieve both TCE and the OPA of any financial obligations if events beyond their control (force majeure events) caused the plant's ... operation date ... to be delayed”—with no penalty and at no cost. Did anybody from Cabinet Office or the ministry tell you that you could cancel this contract without any cost?

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**Hon. Linda Jeffrey:** What we spoke about was the decision that was for me to sign on the minute, which was agreeing to the approval and the negotiating terms of \$50 million to cover the sunk costs incurred by the Oakville generating station and to approve a provision of a break fee of up to a \$100 million if a new plant couldn't be completed. That's what we talked about.

**Mr. Victor Fedeli:** So they didn't tell you what the Auditor General told us, that you could have got out of it with no penalty and no cost? You were not informed of that?



**Hon. Linda Jeffrey:** We did not discuss that the day that I was given the walk-around document.

**Mr. Victor Fedeli:** Were you told, as the Auditor General also pointed out to us, that you needed to make TransCanada whole, as the auditor has disclosed here in her findings as well? Were you told that?

**Hon. Linda Jeffrey:** I was told there were complex negotiations but that OPA was trying to work hard to negotiate the most commercially reasonable deal.

**Mr. Victor Fedeli:** Yes, well, the auditor told us that the OPA thought it was a bad deal, that the OPA believes that going to Napanee was the wrong place to go. The OPA was committed by the Premier's office to make them whole, and they didn't agree with that either. It's not the OPA here; we're talking about the Premier's office.

So nobody from Cabinet Office told you that (1) you could have got out of this for nothing; and (2) that you were to make them whole. Nobody told you that when you signed this?

**Hon. Linda Jeffrey:** What they provide you with is a detail about the negotiating mandate and that's what I asked questions about. I asked when the reporting back would occur—

**Mr. Victor Fedeli:** Did you ask them what the whole thing would cost? I mean, there is a sentence in there: "other financial arrangements" associated with the term sheet would be the responsibility of the OPA, and as my colleague Lisa MacLeod said today, we also learned that that \$700 million was known back as early as December. And you're telling us you that had knowledge that there would be expected future costs. Did you understand what you were signing, or did you ask any questions about, "Hang on, how much is that, this other financial arrangement? How much are we talking"? Did you ask, "How much we are talking"?

**Hon. Linda Jeffrey:** Mr. Fedeli, I did understand what I was signing, which was a negotiation for a mandate to negotiate up to \$50 million to deal with TCE's sunk costs. That's what I knew to be signing at that point—

**Mr. Victor Fedeli:** Well, it also said "other financial arrangements."

**Hon. Linda Jeffrey:** —and what you're asking me to do is to speculate about future costs, and what I was being asked to sign that day is what I understood.

**Mr. Victor Fedeli:** Well, the briefing that we got, that they say you got, it says "other financial arrangements," so obviously somebody should have asked, "Hang on, a red flag here. How much is this?" As we now know, it was \$700 million speculated; it turned out to be \$675 million.

**Hon. Linda Jeffrey:** What I indicated earlier on, before you arrived, was that any information that I had was based on knowledge that was given to me by ministry officials at the Ministry of Energy, the minister and/or his officials.

**Mr. Victor Fedeli:** So they didn't tell you the whole story? They didn't tell you that you could have got away for nothing?

In the remaining two minutes, I want to jump to October 1. In the Legislature, you stood and said, "The documents in their entirety have been provided to this Legislature." This was October 1. I know the minister talks about commercially sensitive and solicitor-client privilege. This is long after that now. This is after the disclosure; this is after the 36,000 documents. And by the way, you do know that at this committee, there is no commercially sensitive or solicitor-client privilege. We're entitled to all the documents. But that can't be the argument, because you've got 36,000 documents. You stood up and said, "The documents in their entirety have been provided to the Legislature." Yet we've been told by sworn testimony that 20,000 were held by the OPA under the instructions of the Ministry of Energy. Two weeks later, 20,000 documents were indeed disclosed to the Legislature.

Now that you know that "the documents in their entirety" were not provided to the Legislature—you know that that sentence is not true—will you now stand in the Legislature and correct your record?

**The Vice-Chair (Mr. Phil McNeely):** You have a minute left.

**Mr. Victor Fedeli:** Thank you, Chair. I appreciate that.

**Hon. Linda Jeffrey:** Mr. Fedeli, when I spoke in the Legislature in defence of Minister Bentley, I did so with the knowledge at that time of what documents had been made available. I felt that, at the time, there was almost a personal attack being placed by the opposition—

**Mr. Victor Fedeli:** No, no. We're not talking about that. We're talking after—

**Hon. Linda Jeffrey:** You're asking me for my opinion as to what I said—

**Mr. Victor Fedeli:** No, I'm not—

**The Vice-Chair (Mr. Phil McNeely):** Let her answer.

**Mr. Victor Fedeli:** I have about 30 seconds left. This is after—

**Hon. Linda Jeffrey:** Chair, can I get an opportunity to answer the question?

**Mr. Victor Fedeli:** This is after the 36,000, so you're talking about earlier. I'm talking October 1 now. This is long after the platitudes for the minister. Over 36,000 documents were released; 20,000 new documents came up that were withheld from us. You're saying that the documents in their entirety have been provided to the Legislature. You now know that's not true. Will you stand in the Legislature and correct your record, because you now know it's not true?

**The Vice-Chair (Mr. Phil McNeely):** Time is up. We'll go now to the third party: Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Chair. Good afternoon, Minister.

**Hon. Linda Jeffrey:** Good afternoon.

**Mr. Peter Tabuns:** When you received this half-hour briefing on this negotiation minute, who were the individuals who briefed you?

**Hon. Linda Jeffrey:** There were people from Cabinet Office, and there were people from the Ministry of Energy.



**Mr. Peter Tabuns:** And what were their names?

**Hon. Linda Jeffrey:** I couldn't tell you at this point. I'm sure there's a record in the Cabinet Office, but I couldn't tell you off the top of my head right now.

**Mr. Peter Tabuns:** Could I ask you to check and provide that information to this committee?

**Hon. Linda Jeffrey:** Sure. Absolutely.

**Mr. Peter Tabuns:** I appreciate you taking on that duty.

On a different matter, do the political staff in your office respect the Archives and Recordkeeping Act in their management of email?

**Hon. Linda Jeffrey:** Certainly, this has been a heightened issue, and my staff have gone through training. As we all do, we go through new staff all the time, and whether they're trained adequately is something that, certainly, we've all got a heightened awareness to. My staff, I'm fairly sure, were not as well trained as they could have been. So, certainly, on the Information and Privacy Commissioner's advice, we've all gone through additional training as to making sure that we retain our records as her advice has come forth. It's something that we've been alerted to do a better job.

But there were no records in my ministry or in any of the correspondence I would have used on this particular issue, so—

**Mr. Peter Tabuns:** That's not my question, though. But you are aware of the act and the requirement to retain records?

**Hon. Linda Jeffrey:** Absolutely. Yes.

**Mr. Peter Tabuns:** Great.

The potential for this plant—sorry; the plant from Mississauga—to be sited in Brampton showed up in the Brampton News on April 16, 2012. Were you aware of the potential to site the Mississauga plant in Brampton at that time, or before the newspaper report?

**Hon. Linda Jeffrey:** Until it was raised here, I had forgotten that it had even been raised. I'd completely dismissed it. There are many things that I read in my local paper that I find to be not always accurate, so I take everything I read in the newspaper with a grain of salt.

**Mr. Peter Tabuns:** At that time, did you check with the Minister of Energy, or with any of your colleagues, as to whether or not this is correct?

**Hon. Linda Jeffrey:** I didn't, because I didn't believe it was a factual or possible choice of a location.

**Mr. Peter Tabuns:** Were you surprised when the mayor and others spoke up on this and took the action they wanted to take to stop it from being located in Brampton?

**Hon. Linda Jeffrey:** I was not surprised that the mayor went to the newspaper or that she spoke on this issue. I knew that it was not a real or potential site for location. It made no sense, based on the power needs in the area. We already had sufficient power; it made no sense. I don't know why it was even raised, so I didn't see it as being a relevant or—again, whether it was a real potential, so it wasn't something that worried me.

**Mr. Peter Tabuns:** Okay. You're aware that, prior to the contract being signed for the Oakville plant—and I'll speak for the NDP, and the opposition can speak for themselves—that the NDP had warned that it was a bad idea to go ahead with this plant because it wasn't needed and that it was risky. Were you aware of that?

**Hon. Linda Jeffrey:** I became aware of this issue probably after the fact, not during. As I said earlier, this has never been an issue for me, either during the election—before, during or after. It wasn't an issue that resonated with my community at all. It wasn't something that came up in debates; it didn't come up at the door. I pretty much have been following issues since that time.

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**Mr. Peter Tabuns:** But you're now aware that, prior to the Liberal government committing to a billion-dollar contract, they were warned by us in the Legislature—and former Premier McGuinty has acknowledged that—that this was a bad idea.

**Hon. Linda Jeffrey:** I think in hindsight, there were communities that told us that better siting could have been part of that conversation, and certainly all parties in the Legislature came to that conclusion. I think Premier Wynne has talked about the siting being something that we need to get right the next time.

**Mr. Peter Tabuns:** You know, when you tell someone not to drive over a cliff and they drive over a cliff, the responsibility tends to be theirs rather than anyone else's. We told you not to drive over a cliff.

**Hon. Linda Jeffrey:** I appreciate that you gave us that advice.

**Mr. Peter Tabuns:** Would that you would take it in these matters.

**Mr. Gilles Bisson:** It would have been better, yes.

**Mr. Peter Tabuns:** It would have been better.

The risk with private power contracts: We had Ben Chin testify before this committee recently telling us that the beauty of private power contracts was that you passed all the risk on to the private contractor. Having gone through this experience, do you believe that that's the case?

**Hon. Linda Jeffrey:** I don't really have an opinion on how power or energy is purchased or how it's managed. This is not my file, and certainly any knowledge I have with regard to energy is something that I get from the Ministry of Energy in briefings.

As I said previously, over the last two and a half years, I've been pretty much focused on my own ministry responsibilities. Power generation or siting or relocation has not been something that I have great knowledge on, so I don't feel qualified to answer that.

**Mr. Peter Tabuns:** Do you think that when you're dealing with counter-parties, someone who signed a contract with you, if there are problems, it's a good idea to make them more than whole?

**Hon. Linda Jeffrey:** Again, it's not a place where I feel qualified to give answers. When we were dealing with this issue, there were many negotiations that were not made public to either cabinet and/or treasury board



due to the commercial sensitivity, so I couldn't comment on this with any great knowledge.

**Mr. Peter Tabuns:** Well, in your ministry, generally speaking, would you try to ensure that in a commercial transaction, people didn't come out better in a deal than they would have if you'd pursued a particular course?

**Hon. Linda Jeffrey:** There aren't that many deals I deal with. The only people we negotiate with are the federal government, and right now, I'm hoping I come out in a better position than I have previously with regard to housing matters.

**Mr. Peter Tabuns:** I can actually understand that. I'm sure that you feel that in the energy sector, you hope that the public comes out better than they would in normal—

**Hon. Linda Jeffrey:** In a perfect world, they will.

**Mr. Peter Tabuns:** Even in an imperfect world. Apparently, TransCanada knows how to operate in an imperfect world and do better on a deal than they start out with.

In this situation, it was pretty clear to us and many in the media that the reason these power plants were cancelled was to save Liberal seats. The Liberals had made a decision, against warnings both by the communities and by opposition parties. They had gone ahead and sited these plants, decided they were in deep political trouble and decided to take on huge public cost and risk. Do you think that that's a good approach, or do you think, as your Premier said, that it's a mistake?

**Hon. Linda Jeffrey:** I think that there were good intentions by the former Premier to think about power needs going forward. Certainly, the Minister of Energy did his very best to negotiate a good deal. I think we've learned from two auditors' reports that there are lessons to be learned, and Premier Wynne has acted quickly and swiftly to provide as much clarity and transparency to any future negotiations we have with regard to siting. I think Premier Wynne has apologized for the process in the siting and that the communities that were chosen to have these sites were ones that were not happy with those choices. Hindsight is 20/20. I think, ideally, in the future, we will hopefully have sites that are not as contentious and don't cost as much money.

**Mr. Peter Tabuns:** Mr. Bisson will take a few minutes here.

**Mr. Gilles Bisson:** I want to go back to the issue of the estimates committee. Just to be clear, just to review what happened, the estimates committee had requested documents from the Minister of Energy in regard to the cancellation of the gas plants. The then Minister of Energy, Mr. Bentley—a private citizen today—said, "I'm not going to release those documents for two reasons: first of all, sub judice rules"—in regard to the point that you were trying to make—"and solicitor-client privilege."

The committee continued to try to deal with getting a motion through the committee in order to be able to get the request of those documents, because the process is that an individual member can make a request for a document, but once the committee votes and there's a

majority vote at committee to request documents, then you're obliged to give it.

We didn't get to that point initially because the government actually filibustered the committee. They did everything they could to slow down the process of allowing the estimates committee to move that motion. So it's pretty clear that there was an attempt on the part of the government and then Mr. Bentley, the Minister of Energy, and whoever else, to not release the documents for either sub judice reasons or solicitor-client privilege reasons.

Further to that, when we returned, Mr. Leone filed a motion in the House—filed notice that he was going to rise on a point of privilege. Up to that point, the government continued and Mr. Bentley continued to argue sub judice and continued to argue solicitor-client privilege.

It wasn't until after the Speaker ruled that it was a prima facie case of contempt that the government then said, "Okay, let's figure out how we're going to release those documents," just to be clear. So there's a fairly long period of time where the position of the Minister of Energy—and presumably the government—is, "We're not going to release these documents because of sub judice rules and because of solicitor-client privilege." Just so that we're all clear, those are not bases by which you can refuse to give documents, as the Speaker ruled.

In all that time, from the month of May up until—when was the actual point of privilege raised? Do you remember the date? It was August—something?

**Interjection:** September.

**Mr. Gilles Bisson:** It was in September, so there's May, June, July, August—there's a four-month period there where the government is taking the position, "We're not going to release these documents because of sub judice and because of solicitor-client privilege."

Did you at any time have any discussion with any of the government committee members about this particular issue?

**Hon. Linda Jeffrey:** I don't recall a—I'm not a lawyer.

**Mr. Gilles Bisson:** I understand. That's why I took some time to lay it out.

**Hon. Linda Jeffrey:** Thank you. I appreciate that, but I don't feel qualified—first of all, I don't sit on estimates, and I wasn't following what was happening in the estimates committee that closely. I think the time that I learned about what was going on in committee was what I heard in the House. I relied on the advice of the Minister of Energy and certainly anybody from that department who determined what documents should be released.

**Mr. Gilles Bisson:** Fair enough, and I understand. You said that earlier. But my specific question to you is: At any time, did you have a discussion with any of your colleagues on the Liberal side of the estimates committee? Did they come to you? Did you go to them to ask questions? Was there any discussion between you?

**Hon. Linda Jeffrey:** No.

**Mr. Gilles Bisson:** Were there any documents exchanged?

**Hon. Linda Jeffrey:** No.

**Mr. Gilles Bisson:** Were there any discussions that you had with the government House leader or his office in regard to the release of the documents?

**Hon. Linda Jeffrey:** No.

**Mr. Gilles Bisson:** There was no exchange of documents between yourself and—

**Hon. Linda Jeffrey:** There was no exchange of documents.

**Mr. Gilles Bisson:** You never sent an email saying, “Hey, what the heck is going on?”

**Hon. Linda Jeffrey:** Most of the time, I find it’s unwise to put things in emails when you can go over and talk to somebody, but I would say to you—

**Mr. Gilles Bisson:** Okay. So did you talk to somebody?

**Hon. Linda Jeffrey:** —in the case of this, it wasn’t something that was—again, during the last two and half years, I have had some extraordinarily busy files. This has not been my file, and energy is not something that—

**Mr. Gilles Bisson:** Fair enough; fair enough.

**Hon. Linda Jeffrey:** —consumed my every waking day.

**Mr. Gilles Bisson:** My specific question: In those four months when it was quite a contentious issue—the non-release of documents—did you have any discussions with anybody in the Premier’s office?

**Hon. Linda Jeffrey:** I believe the only conversations I may have had were at the cabinet table, where, at the time, the then Minister of Energy would have alerted the cabinet to the fact that there were commercially sensitive negotiations going on, and I would have assumed that it would be unwise to release documents. I don’t recall him saying that, but I would say that that would be the only way I would have—

**Mr. Gilles Bisson:** Was there much of a conversation about it?

**Hon. Linda Jeffrey:** I would say that when I look back at my calendar, because obviously none of us remember what we were doing two and a half years ago, there were a few times when updates did come to cabinet. I don’t recall the conversation about the documents to

committee being the issue. We were dealing with how to negotiate—and certainly the negotiations were something I was asked to sign off on later on, but they were an update as to how things were going with the conversation.

**Mr. Gilles Bisson:** So, clearly, the minister didn’t want to release the documents for his reasons, which were sub judice rules and solicitor-client privilege, and there was some discussion as to why he was doing that and why the documents weren’t being released then.

**Hon. Linda Jeffrey:** I presume so.

**Mr. Gilles Bisson:** Okay. Did you have any conversations with any other caucus members or any other members of cabinet—what’s the word I’m looking for—casual conversations? Were there any casual conversations between yourself and any member of the government in regard to, “So what’s going on? How come we’re not releasing these documents?” kinds of conversations?

**Hon. Linda Jeffrey:** I don’t recall any conversations. I would say that most cabinet meetings are packed agendas. Many decisions and many information items come forward, and you’re running from question period into a cabinet meeting. You’re usually covering seven to eight items. You’re covering items that frequently are outside your knowledge base or your realm. You’re either being given an update or being asked to make a decision. There isn’t a lot of time for idle chitchat.

**Mr. Gilles Bisson:** Okay. No further questions.

**The Vice-Chair (Mr. Phil McNeely):** You’re finished?

**Mr. Gilles Bisson:** I said “no further questions.”

**The Vice-Chair (Mr. Phil McNeely):** We’ll go to the government side—you surprised me there. Mr. Delaney?

**Mr. Bob Delaney:** Thanks, Chair. We have no further questions.

**The Vice-Chair (Mr. Phil McNeely):** Seeing that there are no further questions, the witness may be excused. Thank you very much for coming today.

**Hon. Linda Jeffrey:** Thank you.

**The Vice-Chair (Mr. Phil McNeely):** And we will be having a subcommittee meeting.

Meeting adjourned.

*The committee adjourned at 1622.*











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Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 24 October 2013

# Journal des débats (Hansard)

Jeudi 24 octobre 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 24 October 2013

Jeudi 24 octobre 2013

*The committee met at 0834 in committee room 2.*

## MEMBERS' PRIVILEGES

## MR. DWIGHT DUNCAN

**The Vice-Chair (Mr. Phil McNeely):** The Standing Committee on Justice Policy is now in session. We welcome Dwight Duncan as the witness today. The Clerk will do your affirmation.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly affirm that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth?

**Mr. Dwight Duncan:** I do.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Thank you.

**The Vice-Chair (Mr. Phil McNeely):** You have five minutes for an opening statement, and then the rotation will start—20 minutes, and the next rotation, 10 minutes. The NDP will start the questions. You may start your opening statement. None? Okay, the NDP may start their questions.

**Mr. Peter Tabuns:** Mr. Duncan, thanks for being here this morning.

The auditor has shown that decisions made by Premier Wynne and by Premier McGuinty made sure the private power companies did very well out of these cancellations and the ratepayers got stuck with the bill. Will you apologize for your part in this huge cost boondoggle for the people of Ontario?

**Mr. Dwight Duncan:** I regret the challenges that were faced. They reminded me, for instance, of the cost overruns at Darlington. They reminded me of the Pick A unit 4—I think it was a \$1.4-billion overrun in 2002-03. That was done by a public utility that was bankrupt at the time.

I'm actually, at this stage—while we obviously regret that, all the political parties came to the same conclusion: that it was not proper to locate particularly the Oakville plant where it was located.

So I do regret—I'm like Premier McGuinty. I regret that we didn't move sooner. I remember—you know, I had to actually present the findings of the Pick A unit 4 \$1.4-billion overrun by OPG, so these projects—

**The Vice-Chair (Mr. Phil McNeely):** Closer to the mike, please.

**Mr. Dwight Duncan:** Oh, I'm sorry.

**Mr. Peter Tabuns:** Mr. Duncan, I appreciate that you've expressed regret, and I'd like to go on to my next question.

The Globe and Mail reported in August 2004 that as Minister of Energy, you had introduced a plan to rely on the private sector to build new generation in Ontario. Is that correct?

**Mr. Dwight Duncan:** No. It was a hybrid plan. OPG, you'll recall, was bankrupt at the time. Their business plan had failed. We had diesel generators, one right outside the Hearst Block. They weren't capable, and we actually introduced a hybrid model that sees OPG continuing to operate. By that time, the lease to Bruce Power had occurred. I was pleased to see, by the way, that all eight units at Bruce are running, producing 31% of the power generation, as I understand it, today. So no, that's not accurate.

**Mr. Peter Tabuns:** Did you envision having the private sector build new generation in Ontario, in fact, most of the new generation in Ontario?

**Mr. Dwight Duncan:** Well, in fact, the private sector had been in Ontario for many years; there was a long history of private involvement. For instance, even the public utilities use private companies. So yes, we did. At the time, you'll recall, the old Ontario Hydro had been broken up. It was effectively bankrupt. They had run Pick A unit 4—I forget. The whole Pickering unit A was supposed to be—

**Mr. Peter Tabuns:** Mr. Duncan, I appreciate the—

**Mr. Dwight Duncan:** Well, you asked me a question.

**Mr. Peter Tabuns:** I asked you a question, and you're now going into OPG. I'm not particularly interested in their history.

**Mr. Dwight Duncan:** Well, I am. You know, I had to deal with it; you didn't.

**Mr. Peter Tabuns:** You had to deal with it, but that's not what—

**Mr. Dwight Duncan:** And what I'm telling you is that OPG has—

**The Vice-Chair (Mr. Phil McNeely):** One at a time here. Ask a question and get an answer.

**Mr. Dwight Duncan:** OPG has a history—

**Mr. Peter Tabuns:** A half-hour answer, Mr. Chair?

**Mr. Dwight Duncan:** Yes, well, I didn't even take time for a statement. So OPG has a long history—

**Mr. Peter Tabuns:** No, you didn't take time for a statement; now we go to questions.

**Mr. Dwight Duncan:** And by the way, Big Becky, for instance, another great achievement of our government—

**Mr. Peter Tabuns:** Mr. Duncan—

**Mr. Dwight Duncan:** —did not come in on time and on budget.

**Mr. Peter Tabuns:** Mr. Duncan, you are ragging the puck. You are eating up time.

**Mr. Dwight Duncan:** Listen, you asked me a question.

**Mr. Peter Tabuns:** I asked you a question—

**Mr. Dwight Duncan:** You prefaced it—I reject your premise. OPG has a history of bad management, and you want to go back strictly to that. I think there's a role for them. Our government passed legislation—

**Mr. Peter Tabuns:** I don't need you to give us a lengthy ideological explication on it.

**Mr. Dwight Duncan:** You called me here to answer questions; I'm answering questions.

**The Vice-Chair (Mr. Phil McNeely):** The witness is sworn in. You ask the questions; you have to wait for a proper answer. So continue.

**Mr. Peter Tabuns:** Mr. Vice-Chair, if someone uses up 20 minutes answering a question, they are frustrating the role of this committee.

**The Vice-Chair (Mr. Phil McNeely):** Well, you're using your time now. Just ask the question, and we'll proceed. We'll try to get answers that are shortened.

**Mr. Peter Tabuns:** Well, our purpose is to ask questions. When people—

**Mr. John Yakabuski:** On a point of order—

**Mr. Peter Tabuns:** Just one second. When people act in a way that blocks our ability to ask questions, there's a reason for us to speak up.

**Mr. John Yakabuski:** Point of order.

**The Vice-Chair (Mr. Phil McNeely):** Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Chair. We agreed on this committee that we would—and I would hope that the clock would stop. Could I ask for the clock to stop?

**The Vice-Chair (Mr. Phil McNeely):** It's stopped.

**Mr. John Yakabuski:** Thank you. We agreed on this committee that we would respect and honour the need of the witnesses to answer to questions, but it is not beyond anybody's ability to understand when the witness is ragging the puck. It is our job as members of the committee—and we all agreed that we would give the questioners and the members of this committee also the option to say, "Thank you for that answer. I'm moving on to the next one."

0840

**The Vice-Chair (Mr. Phil McNeely):** Thank you for your submission. We'll just proceed. We'll try to make sure that the answers are succinct and the questions are succinct, and there's no interruptions either way.

Proceed, Mr. Tabuns.

**Mr. Peter Tabuns:** On March 24, 2005, you issued a directive to the OPA to sign contracts for power generation in respect of 2,500 megawatts. The Mississauga

plants were in that. You approved these plants, did you not?

**Mr. Dwight Duncan:** Yes.

**Mr. Peter Tabuns:** You did. On May 30, 2005, you announced that a contract would be signed to proceed with Greenfield South. You agreed to put this plant in this location?

**Mr. Dwight Duncan:** That's correct, yes.

**Mr. Peter Tabuns:** On May 7 of this year, Dalton McGuinty said, "I just want to make it perfectly clear that the only reason I decided that we should be relocating the Oakville plant and ... relocating the Mississauga plant was because those plants were wrongly sited and would compromise the health and well-being of people in those communities." Do you agree with that?

**Mr. Dwight Duncan:** Yes.

**Mr. Peter Tabuns:** The reason at the time we were told was that these plants weren't needed, that the power was no longer necessary. Which was true?

**Mr. Dwight Duncan:** It is true that our government has brought on 12,000 megawatts of new generation since we took office, the largest build-out of hydro—well, of electricity generation—since, really, the building of Niagara Falls. Also, we have invested, I believe, another \$8 billion in new transmission lines.

So we were faced, quite literally at that time—as I'm sure you'll recall, because members of your caucus routinely asked questions about the fact that we were faced, particularly in the summers of 2004 and 2005, with the very real threat of rolling brownouts and blackouts because of the state of repair of our infrastructure.

I had an opportunity to look at the IESO's most recent reports. The build-out of new supply—the downturn in the economy had an impact on demand, but they also credited the success of our—

**Mr. Peter Tabuns:** Mr. Duncan—

**Mr. Dwight Duncan:** If I can just—

**Mr. Peter Tabuns:** —with respect, you're meandering when what I've asked you is, was the decision to close the plants for health or because the plants weren't needed?

**Mr. Dwight Duncan:** There was no meandering when it came to building new power, and we had to get it online. We weren't going to let this economy suffer because it had been neglected by all parties in this Legislature building hydro. So, with respect, at that time the new generation of power was an urgent priority of all Ontarians.

**Mr. Peter Tabuns:** And you contracted out the consultation and siting and got us into this problem. Is that not correct?

**Mr. Dwight Duncan:** No, that's false.

**Mr. Peter Tabuns:** In fact, it was the private companies that decided where they were going to locate their plants. You ran into huge problems—

**Mr. Dwight Duncan:** You're being completely disingenuous.

**Mr. Peter Tabuns:** I am not.

**Mr. Dwight Duncan:** You are. You wanted short answers, you're getting them. You're being disingenuous.



**Mr. Peter Tabuns:** Did you site the plants there or not?

**Mr. Dwight Duncan:** We couldn't rely on OPG because of all the cost overruns. You forget Darlington. You forget Pickering. You forget every project. And I don't say that critically—

**Mr. Peter Tabuns:** I don't remember all the nuclear projects.

**Mr. Dwight Duncan:**—but these projects that you've cited—and by the way, we do use OPG, and we did use OPG, for other build-outs, but we've brought in other suppliers, as has virtually every jurisdiction except those jurisdictions that have pure hydro. We, by the way, through OPG, are doing Mattagami—something your government failed to do; something the Conservatives failed to do. And I think—

**Mr. Peter Tabuns:** Did the Premier ask—

**Mr. Dwight Duncan:** And OPG is doing a very good job with that.

**Mr. Peter Tabuns:** Did the Premier ask you for advice when he decided to cancel the Oakville plant?

**Mr. Dwight Duncan:** Yes.

**Mr. Peter Tabuns:** And what did he ask and what did you tell him?

**Mr. Dwight Duncan:** He basically said to me that he felt that given what had happened over the course—from the time that we had agreed to the Oakville site, given what had happened at the municipal board and elsewhere, given public reaction, given the fact that the opposition parties felt that it shouldn't go forward, that therefore it was time that we move on with this, and I had to agree.

I remember, for instance, Mr. Hudak—I think he was at the Oakville site the day before the 2011 election. I don't have it with me, but I read a number of comments from some of your colleagues, your candidates. There had emerged both through the legal processes and through the political processes an overwhelming consensus that this was not an appropriate site.

**Mr. Peter Tabuns:** So you and the Premier discussed this. Did you know how much it was going to cost?

**Mr. Dwight Duncan:** No, we didn't. We've said that. No one did.

**Mr. Peter Tabuns:** Well, you were the Minister of Finance, and you went ahead with a decision that could—

**Mr. Dwight Duncan:** Yes, because you do—

**Mr. Peter Tabuns:**—be incredibly costly, that has turned out to be incredibly costly.

**Mr. Dwight Duncan:** You do. You do do those things. You campaigned on doing it. You didn't know what it was going to cost. You had a responsibility too, and you failed miserably.

**Mr. Peter Tabuns:** Mr.—

**Mr. Dwight Duncan:** Listen, we all wear this, folks.

**Mr. Peter Tabuns:** Mr. Duncan, you do remember we opposed that Oakville plant.

**Mr. Dwight Duncan:** I mean, we moved on. We did what you called on us to do. There was not a firm price at the time. In fact, I had the opportunity to read the audit-

or's report; she still has variance built into her estimates, which is, I think, fair. She did a very good report. She did report in her report that the \$190-million figure, as it affected the treasury, was accurate.

**Mr. Peter Tabuns:** You know I am talking about Oakville.

**Mr. Dwight Duncan:** My concern as finance minister was the impact on the provincial treasury, the direct impact. It was also on ratepayers, but we couldn't divine that, given that there was a negotiation going on. And, as I say, I noted that the auditor, to this day, is still saying that there's a considerable variance in what the final costs will be.

**Mr. Peter Tabuns:** Did the Premier ask you for advice when he cancelled the Mississauga plant, and did you have numbers when you did that?

**Mr. Dwight Duncan:** No. I wasn't directly—I don't recall having a direct conversation with the Premier about that, but we did discuss it at cabinet. Again, I had heard from opposition MPPs. I had heard from government MPPs that that particular Greenfield site—in my recollection, there were a number of challenges with that, quite apart from the actual site itself and the local opposition. For instance, they weren't meeting targets and so on in terms of development. By that time, I was no longer energy minister, but as finance minister we did discuss it. I think you have in your possession a trail of documents that indicates the sequences, the sorts of treasury board minutes and so on. But I don't recall a specific conversation with Premier McGuinty on that issue, other than through the formal processes of cabinet.

**Mr. Peter Tabuns:** So you had cabinet debates about this, then.

**Mr. Dwight Duncan:** I don't recall debates, per se. That was some time ago, but I'm sure the Minister of Energy and the Premier—we did discuss the issue; I wouldn't necessarily use the term “debate.” But, again, decisions had been taken based on the advice of local council, the mayor, opposition parties, the people in the Mississauga area, our local members—

**Mr. Peter Tabuns:** Mr. Duncan, I actually wasn't asking about them. I was asking about your discussions with the Premier. You've told us that you had discussions in cabinet about this—that's interesting news to all of us—and you didn't have the numbers prior to the election as to what it was going to cost if you cancelled this.

**Mr. Dwight Duncan:** I don't think that should be news. I had a look at the documents that have been given to you, and all the emails, and there's quite a bit of—that shouldn't be newsworthy. What I would say is—

**Mr. Peter Tabuns:** The reporters are now informed.

**Mr. Dwight Duncan:**—I don't recall all of the discussions and so on, but yes, there were discussions. I don't recall having a specific conversation with Premier McGuinty, just one on one, about it.

**Mr. Peter Tabuns:** You signed off on an arbitration agreement, along with Kathleen Wynne, regarding the Oakville plant. The Auditor General wrote that “all of the provisions in the Oakville plant contract that gave the OPA opportunity to minimize damages were explicitly



removed from the arbitration framework.” Why did you leave the OPA without any defences going into that arbitration?

**Mr. Dwight Duncan:** We were advised that this would probably be the best course of action to try to minimize the costs associated with any litigation, if that should come to be. By the way, I think that was done by walk-around. Premier Wynne, at the time, wasn’t central to these decisions. I was; Premier McGuinty was. Cabinet obviously participated in them, but oftentimes, when something needs to be done, particularly executing a legal document or so on, or executing a cabinet minute, we do what are called “walk-arounds.” At times when—

**Mr. Peter Tabuns:** No, I’m familiar with that.

**Mr. Dwight Duncan:** If I may, though, you’re trying to implicate the Premier in something she really wasn’t directly involved in. She may well have—

**Mr. Peter Tabuns:** She did sign off on it.

**Mr. Dwight Duncan:** Well, yes, and that often happens. I used to sign off on what are called—this is what I’m trying to explain to you—

**Mr. Peter Tabuns:** No, I understand. She has explained.

**Mr. Dwight Duncan:** I think you’re mischaracterizing her role in this, and I don’t think that’s fair. Oftentimes, Toronto ministers, because they’re close—when the Legislature isn’t sitting in the summertime, things need to be signed. That’s what would happen.

That being said, I’ll go back to your questions.

**Mr. Peter Tabuns:** Who briefed you on this cabinet minute? What did they tell you? What did you ask?

0850

**Mr. Dwight Duncan:** I had multiple briefings on these things. There wasn’t a specific on this one. Obviously, we kept up to date. I don’t remember who, specifically, but again, I’ve seen the documents that have been provided to you. You have treasury board documents. You have, I think, some cabinet documents. You’ve got some emails and so on. So I was briefed on a number of occasions. This was an ongoing issue.

One of our concerns at the time, too, was that there really still was a need for new power sources in the western GTA, in terms of meeting the increasing demand in one of the fastest-growing areas of the province. We did manage to site other plants in the western GTA. We managed to site the Hearn plant. I think we did a total of 17 plants—

**Mr. Peter Tabuns:** Mr. Duncan, you answered my question.

**Mr. Dwight Duncan:** Okay. Ask another one.

**Mr. Peter Tabuns:** Do you accept the auditor’s report on Oakville?

**Mr. Dwight Duncan:** Yes.

**Mr. Peter Tabuns:** Why did the government lowball the cancellation of the Oakville gas plant when it made its announcement about the settlement, claiming the cost was \$40 million, when there were many other costs, including the known cost of \$210 million for turbines?

**Mr. Dwight Duncan:** No one lowballed anything. There was a great deal of uncertainty about it. I addressed the question of what the fiscal impacts were directly, which, I think the Auditor General confirmed, turned out to be a fairly accurate figure. Myself and others were very cautious at the time about the numbers we used because we didn’t know them. I think we were pretty candid in saying that these matters were subject to negotiation that were commercially sensitive, and our desire, having acknowledged that the site that we chose was not the right site and should not have gone forward; having acceded to the people of Oakville, who spoke very clearly through their member of Parliament—Kevin Flynn, for instance—and through their mayor; having listened to the arguments put forward by both opposition parties, we, in fact—

**Mr. Peter Tabuns:** You’ve given an answer, and you’re going over old ground again.

**Mr. Dwight Duncan:** Well, no, this is all old ground, with respect. You’re not even on TV anymore, for goodness’ sake. You got bumped from your own TV channel. Look—

**Mr. Peter Tabuns:** Mr. Duncan—

**Hon. Dwight Duncan:** Let me again repeat—

**Mr. Peter Tabuns:** You’ve gone through it already.

**Mr. Dwight Duncan:** Okay, go ahead. Ask another question.

**Mr. Gilles Bisson:** By the way, this is still live-streamed.

**The Vice-Chair (Mr. Phil McNeely):** One at a time.

**Hon. Dwight Duncan:** I’m sure all 10 people are watching it.

**Mr. Peter Tabuns:** Just so that you’re clear, in the statements that were made after the agreement was signed with TCE, the MOU, McGuinty said, “On the matter of cost, Speaker, it’s \$40 million ... we’ve nailed that down.” Kathleen Wynne, September 25, 2012: “The total ... is \$40 million.”

You’re saying that you knew there were a lot of other costs. You knew that there was a cost of the turbines at \$210 million. Why wasn’t Premier Kathleen Wynne saying, “\$40 million is part of it. There are other costs to come”—at least the cost of the turbines, \$210 million?

**Mr. Dwight Duncan:** I recall, through various media, through Hansard and others—you’re taking, I think, some liberty in interpretation and taking them out of context.

**Mr. Peter Tabuns:** I think a straightforward “\$40 million, Speaker, we’ve nailed that down” is pretty clear. And that’s what we—

**Mr. Dwight Duncan:** What’s not clear is your question and what I would call the disingenuousness of the question, the misinterpretation of statements—

**Mr. Peter Tabuns:** Why were you allowing your colleagues to mislead the Legislature?

**Mr. Dwight Duncan:** I’m sorry?

**Mr. Peter Tabuns:** Why were you allowing your colleagues to mislead the Legislature?



**Mr. Dwight Duncan:** I think you're misleading this committee by saying that.

**Mr. John Yakabuski:** Chair, point of order.

**The Vice-Chair (Mr. Phil McNeely):** Mr. Yakabuski, point of order.

**Mr. John Yakabuski:** I respect the fact that Mr. Duncan is here to testify before this committee, but to challenge the integrity of members of this committee is going a bit overboard.

**Mr. Bob Delaney:** On the same point of order, Chair, this entire question thread contravenes the standing orders, and I think both parties ought to move on here.

**Mr. Gilles Bisson:** I think my learned colleague—

**The Vice-Chair (Mr. Phil McNeely):** You haven't been recognized.

I think we should get away from this debate. Have we turned this off? Yes, we have. Just try to have the questions and the answers more respectful of each other.

**Mr. Gilles Bisson:** Point of order.

**The Vice-Chair (Mr. Phil McNeely):** Mr. Bisson.

**Mr. Gilles Bisson:** Chair, with all due respect, members of this committee have the right to ask questions; he has an obligation to answer those questions. That's what Mr. Tabuns is doing, and I, quite frankly, think we should continue in that vein and not try to interfere in what his questions are, please.

**Mr. Rick Bartolucci:** Point of order.

**The Vice-Chair (Mr. Phil McNeely):** Mr. Bartolucci.

**Mr. Rick Bartolucci:** Chair, Mr. Bisson is right: Members have a right to ask questions, and the witness has a right to answer questions. But I have to be perfectly honest with you: No member has the right to suppose or surmise or form an opinion that is demeaning of any individual, whether he's a member or a witness. I would say that's the point of order that Mr. Delaney wants to ensure and that, Chair, you will want to ensure as we move forward. Questions, answers, name-calling—this thing will just degenerate into a disaster, because no member has a right to accuse a witness of something.

**The Vice-Chair (Mr. Phil McNeely):** That's correct, and I think we went through that with the solicitor early on at another committee: that the witness is sworn, and he has to be able to answer the questions. Let's try to make the questions better; let's try to make the answers better.

Would you proceed then, Mr. Tabuns?

**Mr. Peter Tabuns:** How much time do I have left, Mr. Chair?

**The Vice-Chair (Mr. Phil McNeely):** Two and a half minutes.

**Mr. Peter Tabuns:** Great.

At the time that we were being told that the cost of cancellation was nailed down at \$40 million, did you know it was a lot more than \$40 million?

**Mr. Dwight Duncan:** I can't agree that anyone suggested that the total cost would be \$40 million. Again, you accused the former Premier and the current Premier of misleading the Legislature. First of all, it's not parlia-

mentary. Second of all, in my view, it's not accurate. Third, again, you're taking it out of context.

I did a number of interviews at the time where frankly we were accused of being too vague because we didn't have the numbers. This was subject to a very complex, commercially sensitive negotiation. The former Premier and the current Premier have never, in my view, done what you accused them of doing. I think we all acknowledged—

**Mr. Peter Tabuns:** Did you know it was more than \$40 million at the time?

**Mr. Dwight Duncan:** No, I didn't know. We didn't have precise numbers. What I reported publicly, if I may, was that the cost to the fiscal plan we estimated to be about \$190 million. That turned out to be pretty accurate. The Auditor General affirmed that number in her report. In fact, I had to go out—because the original numbers that had been put out had omitted, I believe, a lawsuit that added an additional \$10 million. But at that time, there were negotiations, and I wasn't at the table for those negotiations. I was briefed on their progress and so on—

**Mr. Peter Tabuns:** Mr. Duncan, you know I am asking about Oakville and not about Mississauga.

**Mr. Dwight Duncan:** Yes, absolutely. But the point is that all of this, particularly Oakville, was subject to what I would call very commercially sensitive discussions. I think it's completely unfair to characterize either of the two Premiers of doing what you accuse them of doing.

**Mr. Peter Tabuns:** You're saying that you weren't aware that there was a \$210-million cost of the turbines on top of the \$40 million.

**Mr. Dwight Duncan:** No, I didn't say that at all. I simply said that it's not fair or accurate for you to characterize either Premier as having misled anyone.

**Mr. Peter Tabuns:** I'm asking you—

**Mr. Dwight Duncan:** I don't agree with you. You asked my opinion and I'm giving it to you.

**The Vice-Chair (Mr. Phil McNeely):** Time is up. We'll go to the Liberals. Mr. Delaney.

**Mr. Bob Delaney:** Thank you very much, Chair. Good morning, Mr. Duncan. It's good to see you back. You're looking very well.

I want to start by talking about the genesis of this issue, which is really the events leading up to and immediately following the great blackout of 10 years ago. In 2003, as a Mississauga resident, it was the third day before we got our power back on. Something I remember hearing, and I recall even you saying to me, is how vulnerable Mississauga and Oakville were to an interruption in either power generation or especially transmission.

What I've heard in the last however many months and through nearly 70 witnesses is really an attempt to reinvent history. Let me just start off by asking you to set the stage by asking, what kind of a godawful mess did our government inherit in 2003 with regard to our power system?

**Mr. Dwight Duncan:** When we came to office, as I indicated, we did not have enough supply. The previous



government had to install diesel generators, including in downtown Toronto. Successive governments—and by the way, this was successive governments, not just of one political stripe—tried to, in my view, and I said so at the time, convince Ontarians that everything was fine and that you could artificially subsidize the price of electricity and so on.

0900

A price cap had been put on to try to hide the cost. It was paid by the taxpayer as opposed to the ratepayer. I had to remove that price cap because it was costing the treasury—I forget—about \$1.5 billion every 18 months.

The public generator, OPG, was effectively bankrupt. In fact, I called on the Honourable Jake Epp, a former Conservative cabinet minister, to take over the chairmanship of that. After he did the report that outlined the—I think it was \$1.4 billion in cost overruns associated with Pick A, Unit 4. As it turned out, the previous government had wanted to refurbish the two remaining Pickering assets, and they couldn't be refurbished.

We did embark on one of the most aggressive rebuilds, or new builds, in Ontario history. The last numbers I saw—I think we've brought 12,000 megawatts of new generation online. A total of 19 gas plants, 17 of which—there's one in my community, as a matter of fact, that is partially owned by OPG. Mattagami is being done by OPG. We've got OPG back in shape. We implemented conservation programs for the first time. Those conservation programs, according to the IESO, have been very successful.

I vividly recall—and you just go and look at the newspapers from the time. There were days where we were literally—

*Interjections.*

**The Vice-Chair (Mr. Phil McNeely):** I recognize Mr. Bisson. I'm sorry. I just thought this was chatter on the side. Okay.

**Mr. Gilles Bisson:** No, no. I was—a point of order. I just forget what the question was. There was a question at the beginning, and I'm not quite sure what he's answering now.

**The Vice-Chair (Mr. Phil McNeely):** I think we'll let the—

**Mr. Bob Delaney:** If I have a problem with the question, I'll let you know.

**The Vice-Chair (Mr. Phil McNeely):** I don't accept that. I think—

*Interjections.*

**The Vice-Chair (Mr. Phil McNeely):** Through the Chair, please.

I don't accept that point of order. I think the question—if you were listening, you would have heard, and I think we should continue. Go ahead with the witness.

*Interjection.*

**Mr. Dwight Duncan:** It has everything to do with it.

**Mr. Rick Bartolucci:** It has everything to do with the question. The person asking the question asked for context around the decisions. He's providing the context, period.

**The Vice-Chair (Mr. Phil McNeely):** I'm satisfied that the question and the answer is going well. Thank you.

**Mr. Dwight Duncan:** Thank you, Mr. Chair.

**Mr. Gilles Bisson:** Can we have Mr. Delaney repeat the question?

**Mr. Bob Delaney:** You can find it out on Hansard when this is done.

Mr. Duncan, please continue.

*Interjection.*

**The Vice-Chair (Mr. Phil McNeely):** Is it a point of order?

*Interjection.*

**The Vice-Chair (Mr. Phil McNeely):** We have to get the chatter down around here. Just get some order.

**Mr. Gilles Bisson:** I've asked the member to repeat what the question was—that's all. Will Mr. Delaney repeat what the question was so we can have context to his context?

**The Vice-Chair (Mr. Phil McNeely):** Mr. Bisson.

**Mr. Bob Delaney:** Thank you, Chair. I'd like Mr. Duncan to continue to his response.

**Mr. Dwight Duncan:** Thank you. It lends at least some sobriety to these undertakings.

We were very close to rolling brownouts and blackouts in Ontario. That was widely reported. There were days, literally, when I got calls in the morning—I was energy minister—saying that today could be the day.

We build out gas plants quickly, because, in the range of options to deal with things in a short term, gas plants can actually be built more quickly than, for instance, a nuclear plant or a new hydroelectric installation and so on. Again, I think we've done 17 of these plants across—including the Hearn plant here in downtown Toronto.

*Interjection.*

**Mr. Dwight Duncan:** The Windsor energy centre was another one, yes.

*Interjection.*

**Mr. Dwight Duncan:** Oh, no. I'm sorry. You're referring to something—I'm thinking of the new gas plant in Ojibway, which was actually an initiative of your government that I had the opportunity to sign off on.

Long story short, the situation was desperate.

**Mr. Bob Delaney:** Okay. In that vein, I remember speaking to you as we left for the summer in 2004. I said to you, at the time, "You've got to be the only person in Ontario hoping for a cold, wet summer in this year of 2004."

**Mr. Dwight Duncan:** That's true, and we didn't have that. In fact, one of the reasons we've moved on the coal plants is because of the whole phenomenon of global warming and so on.

As I understand it, Nanticoke is now coming off-line. In terms of daily production, they're still going to be there to balance what's called the Lake Erie loop, meet our obligations through FERC to the United States and elsewhere. But it was a very real possibility, and literally there were mornings when I had calls from the IESO at the time indicating that this, in fact, could be the day.



There were contingency plans laid out. So we did move very aggressively on a range of options, including conservation, nuclear refurb and renewables in order to get Ontario back to where we are at today, with a much more reliable supply of electricity.

**Mr. Bob Delaney:** And as you pointed out, we didn't have those rolling brownouts and blackouts, largely because it was a cool, wet summer in 2004. In that year—

**Mr. Dwight Duncan:** Actually, in one summer, Bob, not to put too fine a point on it, the American authorities at FERC had to change their rules to allow more importation. It was that desperate. We were very fortunate that it didn't happen.

**Mr. Bob Delaney:** We were, and we actually got a good break from the weather. I remember being on vacation and grumbling about the weather. It was cold and wet.

In that year of 2004, it was the Ministry of Energy that called for proposals for that southwest GTA area. There were two projects ultimately accepted, and those were the ones in Oakville and Mississauga. The responsibility for choosing the site of those plants was that of the promoter, correct?

**Mr. Dwight Duncan:** Yes, but in fairness, ultimately—I mean, there was a lot of discussion about that, not only in these two plants, which turned out to be very problematic, as you know, but on a number of the others. It's never easy to site, whether you're talking about a gas plant, a nuclear plant—even with windmills, there's opposition in many communities to them. These are difficult things. It doesn't mean you don't do them. It doesn't mean you don't take a leadership position. It doesn't mean you just simply not do anything. We didn't have that option.

**Mr. Bob Delaney:** The lands chosen by Eastern Power in Mississauga and TransCanada Energy in Oakville had, however, been zoned by the municipality as industrial in Oakville and, in Mississauga, industrial/power plant. That's correct, right?

**Mr. Dwight Duncan:** That is correct, yes.

**Mr. Bob Delaney:** And in fact, Eastern Power, on July 12, 2005, received a letter from the city of Mississauga, signed by the supervisor of zoning, that says, in part, "The lands may be used for, among other things, manufacturing or industrial undertakings, which would include the generation and distribution of electrical power"—from the city of Mississauga to Eastern Power.

So the city of Mississauga and the town of Oakville both had approved zoning that said that you could generate power on those locations—locations that were purchased legally by the proponents, correct?

**Mr. Dwight Duncan:** That's my understanding, yes.

**Mr. Bob Delaney:** So, in essence, then, neither the ministry nor the government chose these sites. These sites were chosen by the proponents based upon zoning in the municipality.

**Mr. Dwight Duncan:** That's correct, yes.

**Mr. Bob Delaney:** Thank you. You would have been aware, of course, that both opposition parties had also committed to cancelling the Mississauga and Oakville power plants in the 2011 election?

**Mr. Dwight Duncan:** That's correct.

**Mr. Bob Delaney:** Do you recall, either in your capacity as Minister of Energy in the day, or as Minister of Finance, at any point either opposition party saying how much their commitment to cancelling the gas plants would cost?

**Mr. Dwight Duncan:** No, and in fairness to them, they couldn't have known it because it would have been subject to what eventually we have been through, and that is a complicated negotiation. And then there are issues around what affects the fiscal plan versus what affects the rate base about the alternative. As I said, even the auditor, in her report, still has a considerable variance some two years later because of the challenge in measuring and how you report all of these things.

**Mr. Bob Delaney:** So once it became clear, with the availability of a transmission corridor from Bruce into the southwest GTA—for all practical purposes, Mississauga and Oakville, which is my community—and those decisions, by the way, are now and were then very popular ones within our community. We were getting numbers provided to us primarily by the Ontario Power Authority, correct?

0910

**Mr. Dwight Duncan:** Yes, that's correct. It might have been different in Mississauga than Oakville because the Power Authority was still not up and running completely at the time those things started. So there may have been a slight difference in how things unfolded on the Mississauga versus the Oakville plant.

**Mr. Bob Delaney:** Right, but when you quoted a number, the numbers you were quoting came from the OPA?

**Mr. Dwight Duncan:** Absolutely, yes.

**Mr. Bob Delaney:** In May 2012, when the estimates committee had passed a motion from Mr. Leone asking for all correspondence within a specific time frame, he asked it of three entities: the Minister of Energy, the Ministry of Energy and the Ontario Power Authority. At that time, in your recollection, were complex and sensitive negotiations ongoing with both companies?

**Mr. Dwight Duncan:** Yes.

**Mr. Bob Delaney:** Okay. What would have happened if, as the opposition was demanding—in our view, recklessly—commercially sensitive information had been made public prior to the negotiations being finalized?

**Mr. Dwight Duncan:** It would have compromised Ontario's position and probably cost even more than this thing has cost to date.

**Mr. Bob Delaney:** In talking with Mr. Bentley around the disclosure of these sensitive documents, we asked him about the very difficult situation that he was in. Of course, he was able to answer not merely as a minister of the crown but as a seasoned attorney. He said, "Producing the documents and discussing our ongoing negotia-



tions at that time would have significantly hurt our ability to limit the costs of the cancellations and negotiate a relocation and would have increased the cost to the people of Ontario. Having said that, I always intended to produce the documents. It was a question of when, not if.”

I’m wondering if perhaps you could share with this committee some of your views on the allegations made that Mr. Bentley had acted in any manner other than in the public interest.

**Mr. Dwight Duncan:** Mr. Bentley is, first of all, a personal friend, a man of great integrity who, in my view, served his province well. He was in a very difficult position. He was among the leads in those negotiations. He acted responsibly. We were all very much aware that not only would eventually all the details of whatever arrangement was made—but if, in fact, we couldn’t come to an agreement, there would likely be a court proceeding of some sort. He acted responsibly in his capacity as a minister, again, in a way that was designed actually to protect ratepayers, knowing full well that, as he indicated to you, all of that information would eventually become public.

Obviously, there’s a great thirst for that information, both politically and substantively. It’s fair to want to see that, no question about it. Part of the responsibility of the Legislature—not just the government but of the Legislature—is to ensure that, as we move forward on disclosure, we do it in a fashion that doesn’t compromise the interest either of taxpayers or ratepayers. The Auditor General has pointed out to this day that there’s still a variance in what those costs could be.

This is to in no way diminish the fact that this was not a good situation. It wasn’t. It was a bad choice of sites. The government agreed to it. I regret it. I know Premier McGuinty does.

It’s good that we’re having a very thorough canvass of what actually transpired. It’s important that the opposition and the public have access to all of this information so that we can avoid those things in the future. I think we all benefit from that.

I think that, moving forward, Ontario still has a lot of work to do in terms of its power grid, in terms of its electricity generation system. But I think that the disclosure around this has been timely—not as quick as some people would like. But I think the then minister acted in what I would term a very responsible fashion.

**Mr. Bob Delaney:** We’re having these discussions at a time when Ontario enjoys an energy surplus, not a desperate shortage, and at a time when, relative to Mississauga and Oakville, we have a new transmission corridor, and where we can look back with 20/20 hindsight and not sit, as you did, on pins and needles day to day, wondering whether or not this will be the day of the great brownout.

Mayor Burton from Oakville was here, as was Mayor McCallion. Both of them testified that their city councils didn’t agree with the siting of the plants. The MPPs opposed them; city council opposed them; Halton region opposed it; Peel region opposed it. The city of Missis-

sauga had taken the matter to the Ontario Municipal Board and lost, because the OMB, frankly, showed them that their own city plan had zoned the area for electrical power. The town of Oakville could see the same handwriting on the wall.

Wasn’t the province the only last place that both municipalities could go to at that time and say, “Look, this has gone wrong, and you’re the only people who can stop it”?

**Mr. Dwight Duncan:** Yes, and frankly, I concur with what I believe Premier McGuinty testified before this committee and certainly has said publicly: that he had wished that we had moved more quickly to respond, particularly in Oakville. I think he was referring specifically, at that time, to Oakville.

I actually had a meeting with Mayor Burton not long after he became mayor, in 2004, I think, or 2005—I can’t recall—and at that time, no site had been chosen, but he was concerned about where it would go, and he was concerned about a number of factors. Mayor McCallion I met on many occasions; in fact, she had some very specific ideas of her own about where it should go and so on that evolved over time, because, you know, as time goes on, you hear from the community, you hear from people. Zoning bylaws aren’t like the Ten Commandments. They’re not cast in stone; they need to adapt over time.

I wouldn’t blame or be critical of the councils or the mayors of those municipalities for that. The opposition, hearing all of this, got on board with the notion of that, and ultimately the government did.

I concur with Premier McGuinty that we were too slow, particularly in Oakville, to respond to very legitimate concerns, I believe, and having done that, we were faced with the consequence of relocating and what those costs would be and with the fallout from that.

**Mr. Bob Delaney:** Isn’t it a better idea to pay money and at least get some power from it, rather than to just cancel the plant and get nothing?

**Mr. Dwight Duncan:** Yes, but again, we regret that this had to happen. Moreover, we were able—and, again, it wasn’t just me at the time, Bob, that was sitting on pins and needles. It was the business community, it was the employer community—it was everyone. I mean, it was a subject of great debate within the province. Everybody had their ideas about how to deal with it, and we had to move very quickly, and we did. Like I say, I think there’s 12,000 megawatts of new generation, some very robust conservation programs, another \$8 billion in transmission upgrades—

**The Vice-Chair (Mr. Phil McNeely):** Less than one minute.

**Mr. Dwight Duncan:** A number of our local distribution companies have taken great steps.

**Mr. Bob Delaney:** Any other points you want to make in that last minute?

**Mr. Dwight Duncan:** No. I’m fine, thank you.

**Mr. Bob Delaney:** Okay. One last quick question, then. Minister Chiarelli announced that the government is implementing the 18 recommendations of a recent IESO



and OPA report on energy siting. Are you familiar with them?

**Mr. Dwight Duncan:** Yes.

**Mr. Bob Delaney:** And any thoughts?

**Mr. Dwight Duncan:** And I think that's absolutely the right thing to do. Hopefully, we will never be in the place we were at 10 years ago, where you literally have to rush things in order to—because, first of all, it's difficult to rush these things. Even at the fastest time frames, it takes five years, likely, from concept to building a gas plant, 10 or 15 years on a hydroelectric installation, which is why we instituted the long-term energy planning, by the way, something, again, that we established—

**The Vice-Chair (Mr. Phil McNeely):** Thank you. The time is up.

We'll go to the official opposition. Ms. MacLeod.

**Ms. Lisa MacLeod:** Thanks very much, Chair.

Welcome, Dwight. It's nice to see you.

**Mr. Dwight Duncan:** Nice to see you, Lisa.

**Ms. Lisa MacLeod:** I have a couple of questions just in terms of context and timeline, if I might be able to run through the timeline and then just get a few of your comments, if you don't mind.

So, effectively, there's a variety of dates throughout the entire Mississauga cancellation and the Oakville cancellation, and if you don't mind, I'd like to stick to the Oakville cancellation at the moment.

0920

We know, given the testimony of the Deputy Minister of Energy earlier this week—he had stated that the government and certainly the Ministry of Energy, which he is part of, would have known that the costs would have exceeded \$700 million for the cancellation as early as December 2011. At the same time, of course, you would have been prepping for the 2011-12 budget. You also admitted in June 2012 that there was a range of what the cancellation of the gas plants would have been. So one of my questions will be, what was that range you were looking at, given that, on December 14, 2012, you would have paid out \$210 million on the turbines, according to the auditor.

Then we had the Premier in during April 2013, which is several months after that payout, and she came in here to tell us that the range was still \$33 million to \$40 million. So that defies, I think, any logic, given what Serge Imbrogno told us on Tuesday and certainly what we had heard from other deputants to the committee, whether that was Shelly Jamieson, Colin Andersen and others who had said that people knew that there were escalating costs. In fact, Shelly Jamieson, at the time, said that there were “buckets of costs.”

If you can help me go through that sort of time period—we had an election in October 2011; the decisions were all made prior to that. We walked through the whole process. So again, in December 2011, Serge Imbrogno says that we knew there were escalating costs. You were then preparing for the 2011-12 budget. In June 2012, you admit to the estimates committee that there is a range, so I just want to know what that range was. On

December 14, 2012, you would have paid, as finance minister, \$210 million on the turbines. And then Kathleen Wynne comes to committee in April 2013 and still suggests to us that it's only a range of \$33 million to \$40 million.

So I'm just wondering, given that you had just said, in answer to one of my colleagues, that the OPA was giving you numbers consistently throughout the process, what about that \$210 million that was paid out in December 2012? How could you lose track of that?

**Mr. Dwight Duncan:** I don't think anyone lost track of it, Lisa. It's hard for me to follow the dates and the numbers you're using. Let me try to share with you the issues that we were wrestling with perhaps to shed some light on it.

One of the concerns you have, and I had as finance minister, is that we did not know—for instance, in the time all of this was transpiring, we didn't know what the hit to the fiscal plan would be. We didn't know what the direct impact would be, and we were, frankly—because these negotiations were ongoing, we didn't know that for a couple of reasons. One, we didn't know it because we weren't sure what would be applied against the fiscal plan versus the rate base. So we had to actually build contingency into our planning numbers because the one thing I didn't want to have happen was an unpleasant surprise—

**Ms. Lisa MacLeod:** How much was the contingency, Dwight?

**Mr. Dwight Duncan:** I don't recall the figure. It was, frankly—

**Ms. Lisa MacLeod:** Was it \$500 million or something like that?

**Mr. Dwight Duncan:** Yes, it was a high number, and not because it was an accurate number. It was designed that the fiscal plan as laid out—

**Ms. Lisa MacLeod:** And that would be for 2012?

**Mr. Dwight Duncan:** I can't recall the time frames, Lisa, off the top of my head, but what—

**Ms. Lisa MacLeod:** Would you be able to get back to me, Dwight?

**Mr. Dwight Duncan:** No, I don't have the resources. You'll have to ask the ministry. I'm sure they can provide that for you.

**Ms. Lisa MacLeod:** Okay.

**Mr. Dwight Duncan:** But just to finish that, the costs that would directly hit the fiscal plan, from my perspective, were not known entirely, and so I needed to make sure that—because when you're locking down budget numbers for the 2011 budget, for instance, we would have locked down the numbers probably around the beginning of February—I say probably. On the expenditure side and on the reserve side, those numbers probably would have been locked down in November or December 2011. You want to build in flexibility for unanticipated—and we didn't know accurately. We could speculate—

**Ms. Lisa MacLeod:** Would that contingency—

**Mr. Dwight Duncan:** Pardon me?



**Ms. Lisa MacLeod:** Sorry, Dwight, to interrupt you. Would that contingency of about \$500 million have been for those negotiations or general government contingency?

**Mr. Dwight Duncan:** It would have been only as they related directly to costs that would have to be borne by the provincial treasury as opposed to the rate base.

**Ms. Lisa MacLeod:** Okay.

**Mr. Dwight Duncan:** Remember, there's—

**Ms. Lisa MacLeod:** Well, this is, I think, where the confusion is, actually, when you appeared before estimates. People were actually asking you about taxpaying residents rather than ratepaying—

**Mr. Dwight Duncan:** That's right. That's exactly right.

**Ms. Lisa MacLeod:** And I just want to say this. This is not really just directed at you; it's directed to the whole government. I think what appeared to be duplicitous at the time was that when folks were asking about what the impact would be to the taxpayer, you actually took that to a literal meaning of just looking at the taxpayer, not including the rate base. So the semantics and the nuances, I think, were quite unfair, because we ended up at a point where this has cost significantly more than the \$33 million to \$40 million in sunk costs estimated by your government at the time and still today. I think it was very unfair to the people of the province, particularly those who consume power in the province.

**Mr. Dwight Duncan:** I'll respond to that, because obviously I don't agree with you.

Number one, we were very clear, through different ministers. I looked at the transcripts. The questions that I was asked in committee did relate specifically to the taxpayer. I did respond to that. But in interviews, in the House and elsewhere—and the Minister of Energy at the time who had the lead on this was very clear throughout that time that there were separate implications for the rate base.

The fact is, even on the tax base, one of the things you worry about when you go out with a number—and the opposition obviously wants to know a number—one of the things you worry about, particularly if that number appears to be moving around, particularly on something that's complicated, you say to yourself, "Jeez, if I give them the wrong number, even if it's accidental, even if it's"—and if you look at the chain of emails, you'll see those numbers did move around. If I, just to finish—

**Ms. Lisa MacLeod:** Could you give me a range, Dwight, of what you thought it might have been?

**Mr. Dwight Duncan:** I didn't have a thought about it. It's difficult to know what it is on the rate base, because it's not like the fiscal plan, where it affects the current year. This is going to be spread out, as I understand it, over the life of the asset—

**Ms. Lisa MacLeod:** Would any of that work have been undertaken, Dwight, to look at the potential impact on the rate base? I ask you that because it seems to me that when big decisions are made—and we had a cabinet minister in the other day, one who I totally respect, Linda

Jeffrey. I have a good relationship with her, I feel, so I didn't want to be too negative toward her, but I do have a serious question. When you guys are signing off on a cabinet minute and there's a number of \$50 million in there and a cabinet minister comes to this committee and says, "Well, you know, it was only \$50 million"—well, \$50 million is a lot to people.

What would that impact be to the ratepayer? Would that type of undertaking—I'm asking you this as a former Minister of Finance and a former Minister of Energy. Would either of those departments have ever done an analysis similar to that? Or would it be required for us to go to the Auditor General to undertake that, given something of this magnitude—where you can effectively tell us it took between \$33 million, \$40 million or \$50 million from the taxpayer, but you couldn't identify what that would mean to the individual ratepayers of the province, so you didn't want to come forward with that. Would that analysis ever have been undertaken? Could it be undertaken? Or should that be undertaken by the Auditor General?

**Mr. Dwight Duncan:** The government, the Ministry of Energy routinely looks at what the impact of decisions taken will have on the rate base. There's no question about that.

**Ms. Lisa MacLeod:** Would that have been taken in this case, do you think, Dwight? Or would it have been taken by the Ministry of Finance or the Ministry of Energy?

**Mr. Dwight Duncan:** In this case, on the aspect related to the moving of the gas plant, the impact on the rate base, that would have been undertaken by both ministries. Both ministries work fairly closely together. The Ministry of Finance, for instance, has responsibility for the Ontario Electricity Financial Corp., but there would have been attempts made—and, by the way, Serge, who I know appeared before you, and others would be in a better position to give you clearer answers to that. But from my recollection of my time both as energy minister and finance minister, you do worry about what impact any decision will have on the rate base. You look at rates. You're concerned about rates. Your party has passionately argued that our rates are too high, and we're very cognizant of that—

**Ms. Lisa MacLeod:** So does my husband, once a month.

0930

**Mr. Dwight Duncan:** We're cognizant of that, and the government is cognizant of that.

**Ms. Lisa MacLeod:** Can I ask you another question? I'm sorry to keep interrupting you, but you're giving me some material that I'm actually very interested in. If there is ongoing, as you say—you're routinely looking at, to use your words, the "impact" with respect to the rate base. Would that have been undertaken in 2011 or 2012, do you think? I'm asking for your professional advice.

**Mr. Dwight Duncan:** With respect, yes. I'm not saying that just in regard to the gas plants; I'm saying that with respect to the whole energy supply mix. With



every decision you take, you try to estimate what—and there are a number of factors that go into it. With your permission, I'll just take you through that.

**Ms. Lisa MacLeod:** This is important to me, so thank you.

**Mr. Dwight Duncan:** The areas that the province directly impacts is on power generation and transmission—and, to a limited extent, power distribution—so you have the rate regulatory process. For instance, when OPG or Hydro One go forward with a rate application, the Minister of Energy, the Minister of Finance and the cabinet will be apprised of what they're asking for, why they're asking for it, and what the factors are that are leading to this. The Ministry of Energy will look at those things and they'll look at a range of other factors to see what the impact will be on the rate base.

Finance is interested because we get a lot of money from OPG and Hydro One. They are net contributors to the province. In fact, that wasn't the case 10 years ago—it was costing—and now it's back because of the northern energy industrial rate. Our government chose to take some of those revenues and use them to keep the price of electricity for those northern industries—for instance, a smelter; routinely, 30% of their operating costs are electricity, versus, say, 3% or 4% at an auto factory. All those factors come into it.

To your question, the Minister of Energy, the Minister of Finance, the cabinet and the opposition look at how these things impact on the rate base. Now, we could have a huge debate about that, and the interpretation of these numbers is very complex as well. It's always there, and in the—

**Ms. Lisa MacLeod:** What do you think it would be, Dwight? You're well out of politics; you're here today, and it's gracious of you to come. Just out of your professional expertise, and I think it will enlighten all of us, what would your assessment be—understanding you don't have the documents in front of you—on what the impact would be on the ratepayer?

**Mr. Dwight Duncan:** Of what?

**Ms. Lisa MacLeod:** Of the cancellation of the Oakville plant.

**Mr. Dwight Duncan:** I would rely more on the Auditor General's work, because she's had a close look at this. It is a lot of money.

**Ms. Lisa MacLeod:** But that work would have been done by the government, somewhere.

**Mr. Dwight Duncan:** Not necessarily—

**Ms. Lisa MacLeod:** You just said it was, though. You said you would have done the analysis, though, Dwight.

**Mr. Dwight Duncan:** Let's go back to 2004-05. When you start down the path on these things, you don't think to yourself, "Well, this thing is going to get messed up and it's going to cost a billion dollars we didn't expect, and therefore we'll factor that in." Ontario, by the way, has been quite fortunate—

**Ms. Lisa MacLeod:** The only problem with that, Dwight—you've told me while we're having our conversation that the Ministry of Energy—that Serge Imbrogno

will probably be able to give me the impact on the rate base. Serge comes back here on Tuesday and says, "In 2011, the government would have known that the cost could have exceeded up to \$700 million." You're moving forward with a budget within the following three months—you said it was February that you started. You would have had a contingency plan for about \$500 million, which is about 200 million bucks short, and you're just getting set to pay out \$210 million on December 14, 2012, for the turbines. And then Premier Wynne comes in here and still tells us that we're only paying \$33 million. You guys are all using the cover of the distinction between the rate base and the tax base, and I'm simply just asking: Why would any government make a decision that ends up costing, in taxpayer dollars, a billion bucks, at a time when we're in deficit financing and not do an analysis? You're telling me the analysis was done; I simply would like to have the analysis.

I've been sent to Queen's Park by the people of Nepean-Carleton to fight for their interests, and I think they're really interested to know how much their hydro bill is going to increase as a result of this. I appreciate the semantics between the taxpayer base and the ratepayer base, but I must tell you: The men and women in Manotick really don't give a flying fattoush. They don't care about the difference between the taxpayer and the ratepayer, because, as far as they're concerned, their Royal Bank account doesn't distinguish between them being a ratepayer or a taxpayer.

**Mr. Dwight Duncan:** Well, I do, because I can't mislead you. I need to be honest in my approach.

**Ms. Lisa MacLeod:** But you did mislead us. You did mislead us, or your government has misled us.

**Mr. Dwight Duncan:** I appreciate what you're saying. I get that, and I agree with you: They don't distinguish it.

I have to be very careful, because I don't want to mislead this committee. I don't want to mislead the people of Ontario. What I can say is that we spent a lot of money on this. We regret that. Relative to the almost \$30-billion build-out, relative to a whole bunch of other factors, this will not have a hugely measurable impact on somebody's hydro bill. Remember, these plants will continue to generate revenue.

By the way, when I was energy minister, we were nervous about proceeding with natural gas at a time we didn't know about fracking and shale gas, so one of the unintended pieces of good news in moving from coal to gas is the price—at the time I was energy minister, I think we estimated there was 60 years of natural gas supply left in the world. Canada was looking at ways of building liquefied natural gas ports to import liquefied natural gas from Africa and elsewhere.

But we have to be very careful and distinguish. We have to be truthful and open. I would have been very careful about any number I gave you in the past because of the uncertainty around it, and because the advice I was getting from the OPA at the time, from my officials—

**Ms. Lisa MacLeod:** The only thing is, Dwight, and I don't mean to interrupt you—



**Mr. Dwight Duncan:** —was that we don't know the cost.

**Ms. Lisa MacLeod:** —but I only have like three minutes left, according to Mr. McNeely.

**Mr. Dwight Duncan:** Sure, sorry.

**Ms. Lisa MacLeod:** I guess the problem for me comes with this: We were given estimates right up until—well, until the auditor came out—that it was going to cost \$33 million to \$40 million, despite even all of these folks that have appeared before this committee telling us that there were bucket loads of costs etc. Serge Imbrogno tells us, “Well, we knew it was going to be over \$700 million probably in December 2011.”

You continued to use the distinction to say that the range would be \$33 million to \$40 million cost total, yet you were writing a cheque to pay for those turbines in December 2012, for \$210 million. I guess that's where I get concerned, and when you're looking at your economic statement—my colleague Michael Harris had at one point asked you a question in estimates of July 2012: “You mentioned budgeting for these items. In the 2011-12 budget, it actually itemizes, for example, emergency forest firefighting at roughly \$200 million, affordable housing at \$60 million, and Pan Am Games investments at roughly \$60 million. Don't you think”—at the time—“a \$190-million expenditure is significant? And why wasn't it included in your estimates?” I think that's where we get concerned.

And then, later on, in your answer to Mr. Harris—he started talking about this \$1-billion figure, which the government tried consistently to debunk, and your quote was this, on July 19, 2012—understanding we now have an auditor's report confirming the number to be \$1.1 billion, you said, “That's why comments about Oakville at \$1 billion are, frankly, reckless.”

We know now the only thing that's been reckless in this entire process has been this government's handling of the plants, what they have told the public and what was actually happening. When you look at, I think, a range of \$33 million to \$40 million and then the public is actually on the hook for \$1 billion, you did something that wasn't completely honest—not just you, your entire government—during that period. What do you have to say for that?

**The Vice-Chair (Mr. Phil McNeely):** The time is up. I'm sorry about that.

We'll move to the third party. Mr. Bisson.

**Mr. Gilles Bisson:** Thank you very much. Welcome to our committee.

Let's go back to May 2012: The estimates committee is in session, Minister Bentley as Minister of Energy is before the committee and a request for documents is being made. In between the time of the request and him coming back to the committee at another day in order to—he comes back a day or so later and says, “No, I'm not going to provide those documents because of sub judice rules and because of confidentiality.” Was that ever discussed? From the time of the actual request for the documents to his response to this committee, did you

have any discussions with Mr. Bentley about the release of those documents in that period?

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**Mr. Dwight Duncan:** Not that I recall.

**Mr. Gilles Bisson:** Were there any discussions with anybody in that period?

**Mr. Dwight Duncan:** With me directly?

**Mr. Gilles Bisson:** With anybody. Was there a discussion?

**Mr. Dwight Duncan:** I can only speak for myself. I don't recall having a conversation about that matter with anybody. Now, whether or not Mr. Bentley discussed it with the Premier, other ministers, I can't speak for that. But with me, no. And I didn't have that conversation with anyone else either.

**Mr. Gilles Bisson:** Okay, so then, Mr. Bentley comes to committee and then says to the committee that he's not going to release the documents because of the sub judice rule and because of confidentiality. That was the position that he was taking. Was that his own position or was that the position of the government?

**Mr. Dwight Duncan:** He was the minister responsible, and as I indicated in my answer to previous questions, I remember when that happened. The opposition and the public have a legitimate right and desire to see information that you have as a government. What you have to balance that against is by—it's not whether or not you release; eventually, this stuff will come out publicly, both through formal processes and other—

**Mr. Gilles Bisson:** I was asking a question. My question was, when he came back to committee and said, “I'm not releasing this information because of sub judice rules and other reasons,” he had obviously taken the decision not to release at that time. My question is, was that something he just came up with on his own, or was there a discussion with the Premier, with cabinet, with caucus or somebody in regard to that?

**Mr. Dwight Duncan:** I don't recall a conversation at cabinet. I'm certain there would have been a conversation with his officials—legal advice. But I want to stress that he said at the time that he wouldn't release the documents at the time—

**Mr. Gilles Bisson:** No, I understand.

**Mr. Dwight Duncan:** —because they could have compromised the public interest.

**Mr. Gilles Bisson:** I'm not even going to dispute that.

**Mr. Dwight Duncan:** I'm interested in that, because—

**Mr. Gilles Bisson:** No, I'm not disputing that.

**Mr. Dwight Duncan:** Okay. All right. I just want to put that on the record.

**Mr. Gilles Bisson:** No, no.

**Mr. Dwight Duncan:** Mr. Bentley—

**Mr. Gilles Bisson:** My question—

**Mr. Dwight Duncan:** —was acting in good faith—

**Mr. Gilles Bisson:** Let me get back to the question.

**Mr. Dwight Duncan:** —on behalf of the taxpayers.

**Mr. Gilles Bisson:** You've answered—



**The Vice-Chair (Mr. Phil McNeely):** Mr. Bisson, this is—

**Mr. Gilles Bisson:** No, it's my—Chair, it's my—

**The Vice-Chair (Mr. Phil McNeely):** Let him finish it.

**Mr. Gilles Bisson:** Chair, it is my time. I'm asking questions. I will lead the witness the way I choose. Thank you very much, sir.

**The Vice-Chair (Mr. Phil McNeely):** It's very important to the witness. Let him finish the answer.

**Mr. Dwight Duncan:** You won't lead this witness.

**Mr. Gilles Bisson:** So—well, a very big opinion of yourself.

**Mr. Dwight Duncan:** You won't lead this witness. I'm going to tell the truth.

**Mr. Gilles Bisson:** Well, I'm not saying you're not saying the truth, witness.

**Mr. Dwight Duncan:** Well, don't try to lead me.

**Mr. Gilles Bisson:** What I'm asking is a question, and my question is—

**The Vice-Chair (Mr. Phil McNeely):** I'm asking you, Mr. Bisson, to allow that answer to be completed.

**Mr. Gilles Bisson:** I'm doing the questioning. When you're in this chair, you do the questioning. Thank you.

**The Vice-Chair (Mr. Phil McNeely):** Yes, and because the witness is sworn, you must wait for the answer.

**Mr. Gilles Bisson:** So back to Mr. Duncan.

**The Vice-Chair (Mr. Phil McNeely):** Mr. Bisson, you're out of order.

**Mr. Gilles Bisson:** No, I'm not out of order. I'm asking a question, and I would like to have the witness answer the question.

**The Vice-Chair (Mr. Phil McNeely):** You will not ask the question.

**Mr. Gilles Bisson:** What I'm saying is, I'm not disputing—

**The Vice-Chair (Mr. Phil McNeely):** Now, let the witness answer that question. It'll only take a minute.

**Mr. Dwight Duncan:** I'll simply conclude by saying that Mr. Bentley acted in good faith and acted to protect the interest of taxpayers and ratepayers, knowing full well that all the information would eventually be released when it wouldn't compromise the interest of taxpayers and ratepayers.

**Mr. Gilles Bisson:** So back to my question. I'm not disputing what he said at committee. He said at the time that he would not release the documents. There was obviously a decision not to release documents at that time. My question to you is, was that a decision that he came up with on his own, or was that a discussion amongst cabinet or government in any way?

**Mr. Dwight Duncan:** There was no discussion that I recall at cabinet about that. I'm quite certain he would have had the benefit of advice from his ministry, likely the Premier's office, likely outside counsel.

**Mr. Gilles Bisson:** Did Mr. Bentley at any time come to cabinet in order to update his cabinet colleagues as to where things were at with the release of documents?

**Mr. Dwight Duncan:** Not to my recollection.

**Mr. Gilles Bisson:** Well, we had a minister here the other day, the Honourable Linda Jeffrey, who said that, in fact, he did come to cabinet and he did give updates on what was going on with the release of documents.

**Mr. Dwight Duncan:** He certainly gave updates. Now, you asked me specifically about release of documents.

**Mr. Gilles Bisson:** Yes, updates.

**Mr. Dwight Duncan:** He certainly gave updates—no question about that. I don't recall whether he addressed the specific issue of release of information. I simply don't recall that.

**Mr. Gilles Bisson:** So you established that there were updates at cabinet.

**Mr. Dwight Duncan:** Oh, sure. Absolutely.

**Mr. Gilles Bisson:** Very good. And so the government at one point obviously made a decision that they were not going to release these documents. So now the question—

**Mr. Dwight Duncan:** At the time.

**Mr. Gilles Bisson:** At the time, and so—

**Mr. Dwight Duncan:** In the interest of taxpayers and ratepayers.

**Mr. Gilles Bisson:** Well, the interest of taxpayers—

**Mr. Dwight Duncan:** Well, no, that's important.

**Mr. Gilles Bisson:** It's also very important—

**Mr. Dwight Duncan:** I don't agree with your characterization.

**Mr. Gilles Bisson:** If you'd let me finish asking the question—

**Mr. Dwight Duncan:** Well, let me finish answering and I'll let you finish asking.

**Mr. Gilles Bisson:** —then you'd be able to answer the question. Thank you.

**Mr. Dwight Duncan:** Okay. You're welcome.

**Mr. Gilles Bisson:** So the point is, the minister had decided not to release the documents, and my question was, was there any discussion at cabinet or within caucus in regard to the strategy around not releasing documents at that time?

**Mr. Dwight Duncan:** We all agreed the documents had to be released at the appropriate time, in a way that didn't compromise the taxpayer-ratepayer interest.

**Mr. Gilles Bisson:** So there was some discussion in regard to how you were going to release the documents?

**Mr. Dwight Duncan:** I don't recall a discussion specifically of that, but we all knew that all these documents would be public at some point—not at a time, you know, to satisfy—

**Mr. Gilles Bisson:** I'm not disputing that fact, Mr. Duncan.

**Mr. Dwight Duncan:** Well, you're implying that.

**Mr. Gilles Bisson:** No, I'm not implying anything.

**Mr. Dwight Duncan:** Your language, your wording is implying that. I want to be very clear. Every one of us involved in these decisions knew that everything we said would be subject to public scrutiny, everything we did. Every document eventually would be released. At that point in time, frankly, this could have landed in court,



and we would have had no control over anything at that point.

All I'm saying is, we knew darn well that everything about this would become public, as it should be. The only question was the timing of it, and we didn't, at that point in time, want to compromise the interests of taxpayers and ratepayers.

**Mr. Gilles Bisson:** Mr. Duncan, with all due respect, I'm asking a question. I'm not even disputing the point that you're putting forward. We can have you come back again as a witness. If you want to rag the puck today, that's fine. We can have you come back to the committee and have more time with you, if that's what you choose.

**Mr. Dwight Duncan:** Sure.

**Mr. Gilles Bisson:** I'm just asking you to answer the questions.

**Mr. Dwight Duncan:** I'd love to come back. I miss you guys.

**Mr. Gilles Bisson:** Well, the feeling may not be—

**Mr. Dwight Duncan:** I just want to say, Mr. Chair, that I did immediately accept the invitation without having to be subpoenaed. I accepted the time and came here in good faith—

**Mr. Gilles Bisson:** Can you tell us what you had for breakfast that morning?

**Mr. Dwight Duncan:** You know what? This is why this is such a kangaroo court. I mean, you are just—you have no interest in my view of actually—I thought Ms. MacLeod and I had a very good engagement on serious issues. You're grandstanding. We've acknowledged regret. We're going over the same stuff—

**The Vice-Chair (Mr. Phil McNeely):** Mr. Bisson, proceed with the next question.

**Mr. Gilles Bisson:** Thank you. I appreciate your grandstanding.

So let's just walk to the next spot. Then there's a decision that's given by the Minister of Energy at the estimates committee not to release the documents at that time, and there's a period from there to the point that a motion is moved in committee requesting the documents. So in that period, was there any discussion between Mr. Bentley, the then Minister of Energy, and yourself, cabinet or other members of government?

**Mr. Dwight Duncan:** There were certain—I don't recall having a conversation directly with Mr. Bentley. We were all concerned that the public would have to get this information. We knew the public deserved the information. We wanted to ensure that it was done in a way and at a time—

**Mr. Gilles Bisson:** Would you—

**Mr. Dwight Duncan:** If I may—and in a timeline that didn't compromise the public interest.

**Mr. Gilles Bisson:** I'm going to ask the question again. Was there a discussion between Mr. Bentley and other members of the government from the time he informed the committee that he would not be providing that information to the time of the motion that was moved in committee?

**Mr. Dwight Duncan:** I can't speak to other members of the government. I can speak for myself. I did not have a conversation directly with him about that issue.

**Mr. Gilles Bisson:** So we had a rogue minister?

**Mr. Dwight Duncan:** No, I didn't say that.

**Mr. Gilles Bisson:** Okay. That's fair. That's fair.

**Mr. Dwight Duncan:** You asked me if he had conversations with members of the government—

**Mr. Gilles Bisson:** You've answered my question. Thank you.

**Mr. Dwight Duncan:** I don't know. You'd have to ask him.

**Mr. Gilles Bisson:** Thank you. Well, we might do that.

**Mr. Dwight Duncan:** Well, ask a smart question for a change. Jeez.

**The Vice-Chair (Mr. Phil McNeely):** One minute.

**Mr. Gilles Bisson:** So then, what happens at that point is that there is a point of privilege that's raised in the House, and the point of privilege is that Mr. Bentley could not refuse to release the documents at that time; in fact, there was a request of the committee and the committee was entitled to getting those documents. So in that period from the time that Mr. Leone filed the point of privilege with the Speaker, was there any discussions within cabinet in regard to what that was all about?

**Mr. Dwight Duncan:** I do recall conversations, obviously, about that point of privilege.

**Mr. Gilles Bisson:** And was that at cabinet or just casual conversation?

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**Mr. Dwight Duncan:** They would have been more casual conversations.

**Mr. Gilles Bisson:** So it was never discussed at cabinet?

**Mr. Dwight Duncan:** No, I didn't say that.

**Mr. Gilles Bisson:** Okay.

**Mr. Dwight Duncan:** Don't forget, in cabinet you have ministers-only discussions, you have a number of things. Obviously, the Speaker's ruling, was very important. The government had to take it seriously, obviously.

**Mr. Gilles Bisson:** And at that time—

**The Vice-Chair (Mr. Phil McNeely):** Time is up. It goes to the government. Mr. Bartolucci.

**Mr. Rick Bartolucci:** Just before we move to Mr. Delaney, Lisa's back, and she asked a question at the end that I thought you might want to respond to. So if you do, could you please respond to her?

**Mr. Dwight Duncan:** Yes. We endeavoured throughout—at committee, I was very careful, and in public, very careful to define what I felt we could reasonably define in the public sphere and not put out numbers that eventually could be shown to be very wrong, because the advice I was getting from the OPA, from my own officials at finance, was that these numbers were very much a moving target. I was very cautious about any number that I would use either for public consumption or even for our planning within the budget because of the fear of putting out wrong information. I believe that that



was the right way to manage things, and it was subject, again, to auditor's reports and everything else.

By the way, all those numbers are published. They're published in estimates, they are published in public accounts—they are published in a range of sources. You know, you attempt to answer questions to the best of your ability, and if the advice you're given is that it's difficult to answer, say, a specific question about "How much does this cost?" and you really don't know at that point, you're wise not to, because that number will be brought back in the future if you turn out to be wrong—and candidly, we were wrong on a number of things, as is the case. That's why I was glad that the Auditor General came in to look at this, to help give the taxpayer—and I found it interesting that even the Auditor General, here we are two years later, still had to put some caveats around this because the numbers are still very much a moving target.

**Mr. Rick Bartolucci:** Thanks, Dwight.  
Bob?

**The Vice-Chair (Mr. Phil McNeely):** Mr. Delaney.

**Mr. Bob Delaney:** Thank you very much, Chair.

I don't have too many more points to make, Mr. Duncan. I just do, however, want to talk a little about the notion that we could have simply, as the Auditor General put it, waited it out in Oakville. As we both know, TransCanada was actively contesting the bylaws passed by the town of Oakville, and they had five appeals, both at the OMB and in Divisional Court.

Chris Breen from TransCanada was here. He testified at the committee, and he said: "We had a contractual obligation. It was very cleanly spelled out in black and white that that was our responsibility: 'You have to go through every possible channel to deliver on your obligations in this contract.' And we would have done that." He further said, "TransCanada were confident that they were going to eventually get to build the project on the Ford lands," referring to Oakville.

Ben Chin, who had formerly worked with the OPA, said much the same thing. He said that in the OPA's view, all of the obstacles put forward by the town of Oakville could be overcome, and he said that it was just a matter of time. He went on to say: "TransCanada was very confident in their legal advice. Their legal advice looked sound to our legal team.... I think that history would show that in most cases like this, whether it's a power plant or some other piece of vital infrastructure, there are strong arguments on the side of upholding the contract."

We also know from Mississauga that as soon as the bylaws had been overturned—in Mississauga's case, at the OMB—the city had to issue the building permit.

So what I'd like you to expand on is whether the province would have been taking a huge risk if it had tried to simply wait it out and the Oakville bylaws, as everyone expected, including the AG, would have been overturned. If the decision to relocate the plant had not been made until construction had started, talk about whether the costs would have been much higher.

**Mr. Dwight Duncan:** They likely would have been. Again, it's difficult for me to speculate as to how much, but I would concur with that analysis. Again, it comes back to—and I concur with what Premier McGuinty said, I believe in testimony to this committee, that one of the regrets we have, among others, is that we didn't move sooner.

Had we not done it at that point in time, I agree with you, Bob, that it didn't look promising in terms of whether or not TransCanada would be successful legally, and that, among other things, informed the Premier's decision to cancel the plants. Again, there was a range of things that did that. It was the constant pressure of the opposition, the community, the mayor particularly in Oakville, our local member in Oakville. It was virtually unanimous. To your point, had we waited longer—the mistake we made is that we didn't do it sooner. Had we waited longer, it would have cost more.

**Mr. Bob Delaney:** Okay. Every now and then, the province's public accounts can make for enlightening reading. Very often they are a non-prescription sedative, but there's some really interesting nuggets of truth in them. For example, the OPA's estimates for sunk costs for both power plants have already been accounted for and they've been posted publicly in the province's public accounts.

**Mr. Dwight Duncan:** That's correct.

**Mr. Bob Delaney:** So just to confirm with you, because this did happen on your watch, the \$190 million for Mississauga was actually paid for in the 2011-12 fiscal year.

**Mr. Dwight Duncan:** Absolutely. It wasn't dealt with in the year that was referred in the question from the opposition. You're absolutely right about that, and it is a matter of public accounts.

**Mr. Bob Delaney:** And the \$40 million for Oakville has already been paid for in the 2012-13 fiscal—

**Mr. Dwight Duncan:** That is correct.

**Mr. Bob Delaney:** That means that the cost of building and operating the new plants, like all of the other energy projects that you cited earlier, will be part of the rate base and that any future net costs accrued over the life of the relocated plants will be paid out over 20 years?

**Mr. Dwight Duncan:** That's correct.

**Mr. Bob Delaney:** So in other words, if the actual number is somewhere in between the OPA's forecast of \$310 million and the Auditor General's forecast of \$635 million, that would be a net impact of that portion of between \$15.5 million and \$31 million per year for 20 years?

**Mr. Dwight Duncan:** That's correct.

**Mr. Bob Delaney:** That would happen at roughly the same time as the savings from the renegotiation of the Samsung and numerous other agreements are also spread over the same time period, which would mean that there would be a minus \$15 million to \$31 million offset against a plus approximately \$280 million?

**Mr. Dwight Duncan:** Yes. In general terms, yes. I mean, at the end of the day, we all regret this. There was



ratepayer and taxpayer money spent that didn't have to be spent. Unfortunately, it happened. I think the characterization that this is going to have a horrendous impact or the implication on electricity bills, to your point, it works out to—and again, I'd have to rely on the Auditor General or someone else. You folks may want to look at that. In terms of its impact on someone's rate bill, you know, \$30 million, \$50 million a year on a multi-billion system is not going to be as evident as is implied in the way this has been approached.

That being said, clearly this is not something that any of us is happy about. As Premier McGuinty said, I regret that we didn't move sooner. I am very proud of the fact that we've brought 12,000 megawatts of power on, that our system is considered reliable, that we are virtually out of coal. I do regret that we weren't able to do it in the time frame we originally wanted to, but we've done it. I remember, 10 years ago, people in this room and others saying, "You're crazy. Stick with coal." Now every other jurisdiction except those that actually produce coal, which we don't, are moving in exactly the same direction Ontario has. I'm proud of the fact we have a long-term planning system in place, because it takes—

**The Vice-Chair (Mr. Phil McNeely):** One minute left.

**Mr. Dwight Duncan:** —five to 10 years to build a plant. When the old Ontario Hydro was broken up, we didn't even have the ability to enter into agreements. There was no planning process left in the system. We had a spot market but no future market. But you regret these things. You do your best to be timely with information and honest with information. That may trouble some people, that you have to parse your words, you have to be very careful, but I much prefer to err on the side of caution in those things.

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I'm glad to have the opportunity to be here today with you. It's a great opportunity. I was surprised, frankly, you didn't call me sooner. You must have been way down the list.

**Mr. Dwight Duncan:** And I miss all of you, by the way. I see these—

**Mr. Bob Delaney:** Before the last of the sand has run out of the hourglass, I just want to get on the record, thank you, Minister Duncan. You left the system better than you found it.

**The Vice-Chair (Mr. Phil McNeely):** Time is up. We will now go to the official opposition. Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much.

I appreciate you coming in this morning, Dwight. I just want to go back to a little bit about—

**Mr. Dwight Duncan:** John, just one second. All joking aside, how much time do we have left? I'm sorry.

**Mr. John Yakabuski:** Ten minutes.

**Mr. Dwight Duncan:** Ten, okay. Jeez, I couldn't handle another hour.

**Mr. John Yakabuski:** Mr. Delaney's assertion about—you know, the spin that the government wants to be putting on this issue today, particularly since the

Auditor General's report, is, "Oh, when we amortize this over X number of years, it's just not that big a deal and somehow we should just be forgiven for this." If somebody robbed \$1 million, just \$1 million, from the Royal Bank, and they had a million depositors, the impact to each depositor would only be a dollar, but I hardly think anybody would be pinning a medal on the chest of that robber, which is what Mr. Delaney seems to be wanting to do to the government.

**Mr. Bob Delaney:** On a point of order, Chair: As recently as yesterday in the House, the Speaker cautioned members against this particular line of discussion and—

**Mr. John Yakabuski:** We're not in the House, and I have the right to ask the questions.

**Mr. Bob Delaney:** The conduct in the House is the same as that here in the committee.

**Mr. John Yakabuski:** Please—

**Mr. Bob Delaney:** You're governed by the same standing orders, Mr. Yakabuski. I'd like you to just clean it up a bit.

**The Vice-Chair (Mr. Phil McNeely):** Thank you, Mr. Delaney.

**Mr. John Yakabuski:** Chair, was my clock running?

**The Vice-Chair (Mr. Phil McNeely):** I agree that their line of questioning was not proper. If you could just change it a bit, I think it would—

**Mr. John Yakabuski:** It was an assertion. Chair, please stop the clock, and I would like to settle this, please.

How am I prohibited from asking a question that compares what Mr. Delaney was saying about the government's spin on the cancellation and amortizing that to what would be something the public views as equally wrong?

**The Vice-Chair (Mr. Phil McNeely):** So just go over the question. The question as you have phrased it now, it's proper. Just make sure that you don't go in the wrong direction with your question.

**Mr. John Yakabuski:** Well, I'm going to move on, because Mr. Duncan, I'm sure, has other obligations as well.

So I want to go back a little bit to what you were talking about in the first part of Mr. Delaney's questioning, talking about the decision in 2010 to cancel Oakville and how you just felt it had to be the right decision at the time. The decision and the contract to build Oakville was only signed one year earlier. The world did not change that much. The circumstances in Oakville didn't change very much from 2009 to 2010. The recession had already impacted. Everything had already taken place. The decision was made, as you said at estimates itself, about cancelling the Mississauga plant, by the political operatives.

So why do you defend the decision at the time in 2010? The same circumstances existed in 2009. Why would the decision not have been made earlier?

**Mr. Dwight Duncan:** First of all, as Minister of Finance/Deputy Premier—both Premier McGuinty and I have taken responsibility for the decisions that were made. It was not political advisers, it was not back-



room—do we get advice? We sure do. We get advice from you all the time, every day in the House, and constantly—

**Mr. John Yakabuski:** You never take it.

**Mr. Dwight Duncan:** Oh, that's not true at all. That's not true at all.

The Premier and I have both indicated we take full responsibility. And by the way, a lot of those people who have appeared before you are outstanding public servants, people of great integrity, who did their best, sometimes in difficult circumstances.

**Mr. John Yakabuski:** Okay, thank you.

**Mr. Dwight Duncan:** So I didn't quite understand the question.

**Mr. John Yakabuski:** Well, I'm curious as to why—

**Mr. Dwight Duncan:** Things do change quickly; they do in this business. You know that.

**Mr. John Yakabuski:** Well, they didn't change that dramatically—

**Mr. Dwight Duncan:** Well, they did. I don't agree with you.

**Mr. John Yakabuski:**—and the records actually can show that.

**Mr. Dwight Duncan:** And, by the way, it didn't start in 2009; it started in 2004. We had a lovely chat about that earlier today.

**Mr. John Yakabuski:** But you signed the contract in 2009, Dwight.

**Mr. Dwight Duncan:** Absolutely, but you know what?

**Mr. John Yakabuski:** The contract was signed in 2009. I've got my answer. Thank you, Chair.

**Mr. Dwight Duncan:** We actually began the process back in 2004-05.

**Mr. John Yakabuski:** I'm going to move on.

**Mr. Dwight Duncan:** Sorry. I didn't mean to take your time.

**Mr. John Yakabuski:** In the questioning by Mr. Tabuns of the NDP, he raised the point about how you sold away the rights—or gave away the rights—in the arbitration decision. Basically, you sold all your trump cards, gave away all your trump cards, and the auditor cited that in her report. You, by the way, have supported the report and you've said it's a good report; I'll paraphrase you. When he asked you and you were talking about it, you said, "We were advised that that was the right thing to do," but you never did—you talked in all kinds of circles about who might have given that advice, but this advice has led to possibly tens, if not hundreds of millions of dollars in additional costs because of the contract and the settlement and how it has been structured with TCE. This is a paramount issue with the people of Ontario. Where did you get the advice to give away your rights that would have been part of the original contract in the arbitration, specifically?

**Mr. Dwight Duncan:** As I said, I welcome the auditor's report. Auditors' reports are always important. They're always worth reading. You try to respond to the Auditor General's recommendations.

**Mr. John Yakabuski:** You said you got advice. Please tell us where you got that advice. Who gave you that advice?

**Mr. Dwight Duncan:** Well, we have Cabinet Office, we have the Ministry of Energy, the Ontario Electricity Financial Corp. We have senior officials at the Ministry of Finance—

**Mr. John Yakabuski:** So they all said the same thing? Just a minute. Everybody said the same thing? No, something triggered you to make a decision—

**Mr. Dwight Duncan:** No, we did. We made—

**Mr. John Yakabuski:**—to give away your rights. Who was the person who gave you that key piece of advice?

**The Vice-Chair (Mr. Phil McNeely):** You've asked a question; let the witness answer.

**Mr. John Yakabuski:** He's not answering the question.

**Mr. Dwight Duncan:** Let me restate—

**Mr. John Yakabuski:** I'm asking for a specific.

**Mr. Dwight Duncan:** Those decisions were taken by Premier McGuinty and myself and the Minister of Energy, period, full stop. We get it—

**Mr. John Yakabuski:** Okay, so you didn't get advice.

**Mr. Dwight Duncan:** We did get advice. We had a lot of advice. Some of it was paid for. We had outside legal advice.

**Mr. John Yakabuski:** Oh, well, then you'd know who those people are. Can you give us those names?

**Mr. Dwight Duncan:** I don't remember their names, but it's all in the public record. You can go and get that. By the way, I wasn't part of the bargaining team, so I wasn't in those meetings on an ongoing basis, nor, to my recollection, was the Premier, although obviously we were kept up to date. So yes, those were our decisions.

**Mr. John Yakabuski:** In another part of your testimony or your answers earlier talking about the OPA and how you rely on the OPA for the numbers—are you indicating that the OPA is a trusted source that you rely on heavily and generally accept their advice?

**Mr. Dwight Duncan:** Someday, perhaps, you'll be a minister.

**Mr. John Yakabuski:** Only if I get ordained.

**Mr. Dwight Duncan:** I certainly hope not.

**Mr. John Yakabuski:** Thanks for your good wishes.

**Mr. Dwight Duncan:** One of the reasons you're there, and the wonderful thing about our public service, whether you're talking about the OPA or whether you're talking about the Ontario public service, is that they do give you advice, but at the end of the day, you, as the politician or the leader or the elected official, can accept or reject it.

**Mr. John Yakabuski:** So—

**Mr. Dwight Duncan:** By the way—if I may, to conclude—I have a great deal of respect for people like Colin Andersen and others. Colin was my deputy minister at finance. I've had the opportunity to work with him.

**Mr. John Yakabuski:** I'm aware of that.

**Mr. Dwight Duncan:** Do they always give the right advice? Well, that's a matter of opinion. Do they have

integrity? Do they give the best advice they can to the government, and are they as informed as they can be? Yes. You, as the government, have the right to accept or reject that advice, and you're the one who has to go and be held accountable to the Legislature and then, ultimately, the people of Ontario.

**Mr. John Yakabuski:** We understand that. Thank you very much.

The OPA—clearly, in the auditor's report, she indicated that it was not their choice. It would have not been their decision. They would not have made the decision, if it was up to them, to relocate this plant to Napanee. What we've seen in testimony from the Auditor General, under questioning by Mr. Fedeli, who was here earlier as our critic of energy—

**Mr. Dwight Duncan:** I wore a yellow tie thinking he'd be here today.

**Mr. John Yakabuski:** —and now our critic of finance, she indicated clearly that the numbers that they've come up with, the additional costs because of the decision to relocate to Napanee, is \$513 million. That decision, then, has to sit solely on the shoulders of the government, not the OPA, because the OPA clearly didn't like the idea of moving that plant way up the line to Napanee. That is an issue that the taxpayers ultimately will decide how well the government did on that. Would you not agree?

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**Mr. Dwight Duncan:** Absolutely.

**Mr. John Yakabuski:** You were not there—actually, you would have been in the cabinet until such time as your resignation; that decision was made. Cabinet would have had to have been aware of that. Cabinet would have had to have supported the decision to move to Napanee, knowing the additional costs—and you as a former Minister of Energy would have understood completely the issues of transmission and gas transportation and all of those kinds of things. How could you have supported that decision knowing that it would cost an additional \$513 million to the rate base?

**The Vice-Chair (Mr. Phil McNeely):** You have one minute.

**Mr. Dwight Duncan:** I guess the question is, had we not made the moves we made, what would the cost to the economy be of the dilapidated, unreliable system that we inherited—

**Mr. John Yakabuski:** No, Dwight, I think that's—now you're going down roads—

**Mr. Dwight Duncan:** You're reviewing—

**Mr. John Yakabuski:** Why would you—seriously, Dwight—

**Mr. Dwight Duncan:** Listen, I'm not disputing anything the auditor said. I acknowledge what the auditor said. I acknowledge the auditor's report.

**Mr. John Yakabuski:** You're hypothesizing. This was a decision that you were actually part of.

**Mr. Dwight Duncan:** Yes.

**Mr. John Yakabuski:** It's \$513 million. How can you defend it knowing that Napanee—the plant at Bath

barely runs as it is. You're going to be building a gas plant that, based on the current needs of Ontario, is highly unlikely to be used very often, yet it's still going to be a \$513-million cost.

**Mr. Dwight Duncan:** That plant will be used a lot over the next 20 years, and I would not for a minute underestimate—

**Mr. John Yakabuski:** Well, if the right government brings back industry—

**Mr. Dwight Duncan:** I would not, if I were you, underestimate the future challenges, because this economy is coming back. Under the leadership of Premier Wynne, I am confident that Ontario will continue to grow. I'm delighted for the region of Napanee. I think there will probably be 70 to 80 people who work in that plant. I know—

**The Vice-Chair (Mr. Phil McNeely):** Time is up.

**Mr. John Yakabuski:** And at times, I miss you too, Dwight.

**The Vice-Chair (Mr. Phil McNeely):** Thank you to Mr. Duncan for being here today. You may now leave.

## SUBCOMMITTEE REPORT

**The Vice-Chair (Mr. Phil McNeely):** We will go ahead with the report on the subcommittee business. Mr. Delaney.

**Mr. Bob Delaney:** Your subcommittee on committee business met on Tuesday, October 22, 2013, to consider the method of proceeding on the orders of the house dated February 20, 2013, and March 5, 2013, and recommends the following:

Ontario Power Authority

(1) That with respect to the committee's May 14, 2013, motion directed towards the Ontario Power Authority:

(a) That the confidential documents received from the Ontario Power Authority not form part of the committee's public record.

(b) That the Clerk of the Committee retains the confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the Committee shall return the confidential documents to the Ontario Power Authority.

(2) That with respect to the committee's August 27, 2013, motion directed towards the Ontario Power Authority:

(a) That the confidential documents received and future documents the committee will receive from the Ontario Power Authority in response to the motion not form part of the committee's public record.

(b) That the Clerk of the Committee retains the confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the Committee shall return the confidential documents to the Ontario Power Authority.

Ministry of Finance



(3) Subject to paragraph 4, the Clerk of the Committee return the confidential documents received from the Ministry of Finance on September 10, 2013, regarding the committee's May 7, 2013, motion and request that the Ministry of Finance do the following:

- (a) Redact all personal and personnel information;
- (b) Redact all information related to Cliffs Resources—Ring of Fire;
- (c) Redact all information related to Cisco Systems; and
- (d) Resubmit the redacted documents to the committee.

(4) That the confidential documents related to the Green Energy Investment Agreement (Samsung) and the Ford Oakville plant form part of the committee's public record unless there remain contractual or unresolved issues regarding these transactions. If the Clerk of the Committee is informed by the Ministry of Finance that there remain contractual or unresolved issues regarding the Green Energy Investment Agreement (Samsung) or the Ford Oakville plant, the Clerk of the Committee will invite the Ministry of Finance to attend an in camera meeting of the subcommittee to discuss these issues.

#### Cabinet Office

(5) That the redacted documents received from Cabinet Office on October 3, 2013, regarding the committee's April 23 and May 7, 2013, motions form part of the committee's public record.

(6) That the Clerk of the Committee retains the unredacted confidential documents received from Cabinet Office on May 7 and May 21, 2013, for the duration of the committee's mandate and that these documents not form part of the committee's public record. That upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the Committee shall return the confidential documents to Cabinet Office.

#### Ministry of Government Services

(7) That the redacted documents received from the Ministry of Government Services on October 4, 2013, regarding the committee's June 25, 2013, motion form part of the committee's public record.

(8) That the Clerk of the Committee retains the unredacted confidential documents received from the Ministry of Government Services on August 15, 2013, for the duration of the committee's mandate and that these documents not form part of the committee's public record. That upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the Committee shall return the confidential documents to the Ministry of Government Services.

#### Summary of testimony

(9) That the research officer and the table research clerk provide a summary of testimony of witnesses from May 2, 2013, to October 10, 2013, by Tuesday, December 10, 2013.

(10) That the summary of testimony be broken down by witnesses, as follows:

(a) summary of testimony respecting the tendering, planning, commissioning, cancellation and relocation of the Mississauga and/or Oakville gas plants, and

(b) a summary of testimony respecting the Speaker's finding of a prima facie case of privilege.

I move that the subcommittee report be adopted.

**The Vice-Chair (Mr. Phil McNeely):** Discussion? Mr. Bisson.

**Mr. Gilles Bisson:** A question to the Clerk: I thought part of the discussion that was supposed to happen and that doesn't seem to be in this document is that the redacted documents that you're holding secure for the period of this committee doing its work—that once the committee looks at a document and sees something redacted, that if you're suspicious that the redaction, in fact, is hiding information we may want to see that is actually not confidential or not commercially sensitive, we'd be allowed to go back and look at the unredacted—

**Mr. John Yakabuski:** The original.

**Mr. Gilles Bisson:** The original document. The unredacted.

**Mr. Bob Delaney:** That's why the Clerk retains—

**Mr. Gilles Bisson:** Mr. Delaney, I'm asking the Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Each caucus has the documents, the confidential, so you can look at them. I'm retaining them, and if you need them, you can contact me. I'm keeping them in my office. Each caucus has a copy of the confidential anyway. I'm keeping them, and then they will be returned back after an election call or the mandate is done.

**Mr. Gilles Bisson:** My question is—back to my original point—that in looking at the redacted documents, we have an ability to unredact a document if we so choose. That's the point that I'm trying to get at.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** We've already received the unredacted, and then we've received redacted. We have both.

**Mr. Gilles Bisson:** I understand that. That's not my point. My point is, the public record is going to have the redacted documents.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Exactly.

**Mr. Gilles Bisson:** My point is that if a committee member of whatever side, government or opposition, says, "Hmm. In looking at this, this should not have been redacted," the committee reserves the right to unredact those parts of the document that they think should not have been redacted in the first place.

The way that this motion reads right now, my question to you is—if such a thing was to come up, the committee would have the ability to unredact that document if it was not properly redacted in the first place?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** You've already received the redacted ones. You've looked at it. We still have them confidential, so you can move another motion or a subcommittee report saying that you wanted those unredacted ones—

**Mr. Gilles Bisson:** Unredacted.



**The Clerk of the Committee (Ms. Tamara Poman-ski):** Unredacted.

**Mr. Gilles Bisson:** The redacted ones—because my point here is this: There may be some legitimate reasons why some of this information we don't want released to the public if it's not related to our work. We get that. And if there's personal, confidential information, like somebody's bank account number or something—I'm just making it up, but whatever it might be—we probably don't want to have that kind of information out there.

My point is, we're relying on the redaction services of the people who gave us the documents, and what I want to put on the record and be really clear about is that if we're looking at—because I don't have the unredacted copy. I know our caucus has a copy, but I don't. I'm relying on the redacted copies because I don't want to be—the problem we have is this: If you release what is redacted—if a member of this committee was to release information that has been redacted, and for some reason it causes somebody harm, we could be in a position of finding ourselves in a position of contempt. So I just want to be very clear that, if I am reading a redacted version, because that's the only version that I'm going to have as a committee member at this point—I don't want to look at the unredacted, for that reason. If I'm looking at the redacted version, and all of a sudden I go, "Holy jeez. There are three pages here redacted. I think this is a bit much," we need to have the ability to go back and verify the redaction.

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What I want to know is, if we go back and verify the redaction, that in fact we are in a position to unredact it. Because I'm relying on the redaction. We've all done FOIs before—

**The Clerk of the Committee (Ms. Tamara Poman-ski):** That's up to the committee to move. If they want to do something else, that's up to the committee. As of right now, one per caucus has confidential documents as well as the redacted, and they've been able to compare. That's what the subcommittee agreed to.

Peter?

**Mr. Peter Sibenik:** Mr. Bisson, passage of the motion will not prevent the committee from subsequently dealing with issues that you raise.

**Mr. Gilles Bisson:** I understand that, but what I'm trying to do is, I'm cautioning members that what is redacted—if we release it, we're in trouble. So I just want to be clear that if you're reading the redacted version and you want to see something that you think shouldn't have been redacted, in fact you have the opportunity to undo it. I just wanted, for the record, to clarify that that's the case.

I've got a couple of other questions. If somebody wants to go first—

*Interjections.*

**Mr. Victor Fedeli:** Am I allowed to speak?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Yes, you are allowed to speak.

**The Vice-Chair (Mr. Phil McNeely):** You are. Mr. Fedeli.

**Mr. Victor Fedeli:** Thank you, Chair. Item number (4), the confidential documents related to the GEIA: If they form part of the public record, when? How do you make it form part of the public record if you still have the capacity to go back and ask the—

**The Clerk of the Committee (Ms. Tamara Poman-ski):** So what I would do is, I would send a letter, with a copy of the subcommittee report, to the Ministry of Finance, asking for clarification on the status of Samsung and Ford. If they were to respond and say that the issues are resolved, then I would request for them just to redact everything in number (3) and then that would be public. But I would need the direction from the Ministry of Finance. If the Ministry of Finance comes back to me and says that these negotiations are still not fully resolved, then I will schedule a subcommittee meeting, we can discuss it, and then we can move forward on how to deal with the rest of these documents, after they are—

**Mr. Victor Fedeli:** I read the documents again yesterday, from top to bottom. My opinion is only one opinion—it wasn't profound. It's only one opinion, but in my opinion, everything in there is satisfied.

But I agree with the writing of this. There's a sentence—maybe we'll do it as an amendment. Let me just read the one sentence, then.

**Mr. Gilles Bisson:** Which part?

**Mr. Victor Fedeli:** The bottom of number (4). I would add, "However, all undisputed Samsung and Ford documents be released immediately." What I'm saying is, if they say there are still unresolved issues, they shouldn't hold the entire two-inch-thick file if there are only one or two pages. That kind of thing is what I'm suggesting.

**Mr. Bob Delaney:** That is, in fact, the intent.

**Mr. Victor Fedeli:** It is understood to be intended?

**Mr. Bob Delaney:** It is understood to be the intent.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Sorry. I can add that. "However, all undisputed"—

**Mr. Victor Fedeli:** —"Samsung and Ford documents be released immediately." I understand it's the intent—

**Mr. Bob Delaney:** All they asked for is, "Can we just do our due diligence on this?" and I said, "Fine."

**Mr. Victor Fedeli:** Yes, but if they say, "Yes, we have issues"—

**Mr. Bob Delaney:** And therefore you can't release anything? No. That's off.

**Mr. Victor Fedeli:** —it may be an issue with four pages out of 400.

**Mr. Bob Delaney:** No, no.

**Mr. Victor Fedeli:** That's the only point I'd make.

**Mr. Bob Delaney:** Yes. We get that.

**Mr. Victor Fedeli:** So if we could have that—I don't know if you want to just include it or have it as an amendment, but that's the only thing that I would offer.

**Mr. Bob Delaney:** If there's any problem with that, I'm going to be voting with you on it, so don't worry about that. Because that was the intent of it.

**Mr. Victor Fedeli:** Yes, I appreciate that.



**The Clerk of the Committee (Ms. Tamara Poman-ski):** So what we could do is just put at the end of number (4), “However, all undisputed Samsung and Ford documents be released immediately.”

**Mr. Victor Fedeli:** Sure, if everybody’s okay with that. That’s the only thought I had, just because I missed the committee.

**The Vice-Chair (Mr. Phil McNeely):** Any more discussion on the amendment, first of all?

**Mr. Gilles Bisson:** I should know the answer to this question, but I’ve never seen the unredacted versions of these documents. That’s why I’m asking the question. I take it the answer is yes, but I just want to verify.

**Mr. John Yakabuski:** Mr. Tabuns has them.

**Mr. Gilles Bisson:** He does, but I have not—

**The Clerk of the Committee (Ms. Tamara Poman-ski):** What we need is to deal with the amendment right now—the subamendment.

**Mr. Gilles Bisson:** Yes, we’re on a subamendment. That’s right. Sorry.

**The Vice-Chair (Mr. Phil McNeely):** So we need to deal with the amendment first. Any more discussion on the amendment?

**Mr. Bob Delaney:** Please read the amendment just one more time.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** I’ll read it. At the end of number 4, after “these issues”: “However, all undisputed Samsung and Ford documents be released immediately.”

**The Vice-Chair (Mr. Phil McNeely):** All in favour of the amendment? Thank you.

Now we’ll deal with the report. Any other discussion on the report?

**Mr. Gilles Bisson:** I just have one last question again for the record. Because I have not seen the unredacted versions, I just want to make sure that the matters that are raised under Ontario Power Authority, Ministry of Finance, cabinet documents and Ministry of Government Services—those original documents are currently with Mr. Tabuns?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Yes. Some of them he didn’t keep because he didn’t want them, but I have them. So you can come back to me and get them.

**Mr. Gilles Bisson:** So my point is, if I want to go and see the unredacted, you have it?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** I have them all.

**Mr. Gilles Bisson:** Thank you very much.

**The Vice-Chair (Mr. Phil McNeely):** Any more discussion on the report? All in favour of the subcommittee report?

**The Clerk of the Committee (Ms. Tamara Poman-ski):** As amended.

**The Vice-Chair (Mr. Phil McNeely):** As amended. Thank you.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Can we raise our hands? Can we do it properly, please?

**The Vice-Chair (Mr. Phil McNeely):** All in favour of the report of the subcommittee, as amended? We have all members supporting. Thank you.

**Mr. John Yakabuski:** Adjourned?

**The Vice-Chair (Mr. Phil McNeely):** Adjourned.

*The committee adjourned at 1026.*

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# Official Report of Debates (Hansard)

Tuesday 29 October 2013

# Journal des débats (Hansard)

Mardi 29 octobre 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 29 October 2013

Mardi 29 octobre 2013

*The committee met at 0831 in committee room 2.*

## MEMBERS' PRIVILEGES

**The Vice-Chair (Mr. Phil McNeely):** The Standing Committee on Justice Policy is now in session.

ASSOCIATION OF POWER  
PRODUCERS OF ONTARIO

**The Vice-Chair (Mr. Phil McNeely):** Our witness this morning is David Butters, president and CEO, Association of Power Producers of Ontario, a government witness.

Mr. Butters, you will now be sworn in.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. David Butters:** I do.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Thank you.

**The Vice-Chair (Mr. Phil McNeely):** We'll start off with you have five minutes to make a statement, Mr. Butters, and we'll start off with the government after that. You may begin. Just state your name for Hansard.

**Mr. David Butters:** Yes, I will. It's David Butters. I'm the president and CEO of the Association of Power Producers of Ontario, otherwise known as APPRO.

I just want to say a little about APPRO before we get started, what we do and what we are. We're the trade association representing almost all of Ontario's large-scale commercial generation companies. That includes organizations like Bruce Power, Ontario Power Generation, Brookfield, TransAlta, Northland Power and Trans-Canada, just to name a few, plus a lot of suppliers of various services to the generation sector.

Our members make electricity from all technologies. They own and operate valuable assets across the province, which are important to local communities, employing thousands of people. They also renew and refurbish existing assets and build new ones, creating thousands of additional jobs in construction and skilled trades.

**The Vice-Chair (Mr. Phil McNeely):** Could you get closer to the mic?

**Mr. David Butters:** Yes, I could. How's that?

**The Vice-Chair (Mr. Phil McNeely):** Thank you.

**Mr. David Butters:** We're primarily an advocacy organization focused on policy-level issues and directions that broadly impact the electricity sector or what we see as significant generation business risk issues, maybe at a more granular level, but we don't get involved in individual members' contractual business matters.

We also put on the premier power conference in the country, November 19 and 20, at the Metro Toronto Convention Centre. If you would like to attend, let me know afterwards. It's well worth your while, I think.

Our vision is for an Ontario electricity sector which is economically and environmentally sustainable and supports the business interests of electricity generators, ratepayers and the provincial economy. That's a tough assignment, but we've been advocating it since 1989. How can we achieve this?

First, we need a stable and predictable policy and regulatory climate. This is critical for cost-effective and timely energy infrastructure investment to meet Ontario's needs and improve system efficiency.

Second, we need to recognize that the private and public sectors both play important roles in developing, building and operating Ontario's energy infrastructure. The bottom line is that ratepayers want value for money. Using long-term contracts and opening competitive procurement will achieve this, but the corollary is that parties to contracts must respect those contracts.

Third, we need a balanced mix of resources—horses for courses, if you will—that includes all the technologies, and we need system plans that are economically rational and based on established planning principles, with clear and measurable timelines and deliverables. Generally, we think that Ontario's hybrid market approach has served Ontario reasonably well. Improvements can always be made to it, but it doesn't need radical surgery. Political involvement, on the other hand, should be limited to larger policy direction, which agencies then implement, or to resolve clear policy failures or shortcomings within the sector.

With that as context, I look forward to your questions.

**The Vice-Chair (Mr. Phil McNeely):** Ms. Cansfield.

**Mrs. Donna H. Cansfield:** Thank you, David, for coming and being part of the committee this morning. It's nice to see you.

You mentioned earlier in your comments that you represent a wide range of organizations, and those organ-

ization, presumably, have a wide range of power, different types of power that they produce. Is that correct?

**Mr. David Butters:** That's correct. We produce electricity from nuclear, water—otherwise known as hydro—gas, wind, solar, biomass—the whole nine yards.

**Mrs. Donna H. Cansfield:** Now, one of the challenges that's been, I think, right from the beginning is the whole basis on how the predictability of developing a system plan—and you identified that as a system plan, the rationale for a system plan, that you have to look at what's current, but then you have to feed it out to a good five to 10 years. It's not a yearly, necessarily, planning basis. One of the challenges, obviously, in doing that are the unpredictable issues, for example, 2008. Who would have predicted 2008?

So, from your perspective, how do you think we could do a better job on that rational kind of planning?

**Mr. David Butters:** Well, I think we do a pretty good job, actually, on the planning part. As you say, the challenges are that these long-run, long-life assets that could exist for 20, 40, 60—if you look at the Beck generation station, it has been around since the early 1920s. So they have long lives, and they're always going to be somewhat out of sync with the economy and the political cycle.

I think the important part of planning—and I always fall back on something that General Eisenhower is reputed to have said, that planning is everything; plans are nothing. It's the planning process. So the plans can't be carved in stone. They need to have some degree of flexibility around them.

Obviously, larger assets, once you make a commitment to them, you're there. But I think the trick for long-term energy planning is to make sure you canvass well, you look at the options, you understand what the implications are; that you build some flexibility into it and be prepared to adjust it as need be.

**Mrs. Donna H. Cansfield:** One of the other issues that has always been something that I think people haven't sort of recognized as part of the planning process is how interconnected we are with the United States when it comes to the distribution and use of power. We typically only hear about it when we talk about shedding.

I think it would be important, from your perspective, in terms of your association and the producers that produce that power and that you represent, that maybe you could explain that interconnectedness with the United States to help us have a better idea around system planning.

**Mr. David Butters:** Well, it's complex, but we are connected to our friends in the US through New York, Michigan and down into what's called PJM—that's Pennsylvania, New Jersey and Maryland—into that area, and power actually does move all the way from there, through Ontario, into Michigan, from Manitoba. So it's a highly interconnected system. It's actually, if you think of it, one of the largest—probably the largest—man-made piece of machinery in the world. We are connected to that entire northeastern grid.

A lot of that is done through markets—bids and offers and wheeling power and that kind of thing. So it's important to keep that aspect of it in mind, although when we do plan, we don't plan on taking into account what our neighbours have. We do build to make sure that we've got what we need, when we need it. If we're not using it, then we'll sell it. If we find we're short for some reason, or if pricing is such that we can take advantage of it, we will. It's a very a dynamic marketplace.

**Mrs. Donna H. Cansfield:** Thank you. I think sometimes we forget just how interconnected we are until there's a tree that falls somewhere on a line down in Ohio, and then we have a major blackout that lasts a significant amount of time here, and people say, "How did that happen?" That it is that interconnectedness, and that is the case.

It also speaks to system planning in terms of the type of power that we need and where we put that power because of the complexity around that distribution system, around the transmission system.

I'd like to hear, from your perspective, a little bit about how you feel the planning could or should take place, given that consideration around the system and distribution. I'm talking the big kV lines.

**Mr. David Butters:** Right. Well, I think the fact is that there are—if you're talking about large-scale generation, there are limited areas where it can be located. If you're talking about gas, you have to be fairly close to gas pipelines. You want to be close to the transmission system. You don't want to have to build any more transmissions than you have to. Nuclear: Obviously, if we were to do new nuclear—and although the government has said that currently they're not planning on doing that, you're going to do it probably where a nuclear facility is already located.

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Other resources can be distributed more widely, and we'll probably see more and more of that in the future. Small distributed energy systems can go, really, anywhere. They could be very small and go in your apartment. They could be larger and go elsewhere.

The planners have to take all that into consideration. What are they looking for? What do they need? It's not just capacity. They're looking for the ability to provide what's called "ramp." That's the ability to pick up quickly and turn off quickly. They're looking for things like reactive power. There's a whole bunch of functional things that planners look on—we just always think about the capacity side of it, but they're looking for a lot more than that. We might be looking at very high—how do we use gas in a very high-efficiency way? Cogeneration or even trigeneration.

It's a very complex planning thing. As I say, it is constrained by where you can locate, where the transmission lines are, and then you get into the issue of what I would call social licence and acceptability. Those all have to be taken into account.

**Mrs. Donna H. Cansfield:** I'd like to chat a bit about that in a minute, but I'd like to talk a little bit more about



transmission. How long have you been involved in this field of energy? A long time.

**Mr. David Butters:** It seems like forever.

**Mrs. Donna H. Cansfield:** Forever. In fairness, David, you have a really good background and a solid footing when it comes to the whole energy sector, from the production to the distribution to the installation to the price—the whole gamut of it. One of the areas where we haven't had as much in the field that's relatively new in technology is the whole area around distribution—how important it is in terms of siting close to those large distribution towers or the big transformer stations. Again, from your perspective, is there room for us to be able to change that?

**Mr. David Butters:** Well, I think so. I think we are moving—one of the things that when APPRO started out—this is long before I arrived. In the late 1980s or early 1990s, it was called IPPSO, the Independent Power Producers' Society of Ontario, and it was very focused on things like combined heat and power, local distributed power. I think we will see more of that in the future as we reinforce our grids. But the problem is always one—it's scale.

If you're going to replace, say, a 1,000 megawatt power plant with distributed generation, then how many of those do you need? You need 10 that are 100 or 1,000 that would be one megawatt. It then becomes a question of where can you locate them.

It would be desirable, I think, to move to more distributed generation. With a smarter grid, we should be able to do that, but that's still some ways away. As I say, it requires a lot of investment in our distribution sector, and we're still behind the curve on the distribution sector too.

**Mrs. Donna H. Cansfield:** David, you were there during the whole process, and not from afar, I'll say, around the siting of the Mississauga plant and the Oakville plant. Part of the mandate of this committee, or the mandate, is to look at how we can do things better right from the get-go in terms of planning right through to involving that siting, and you identified that as one of the more important aspects, balancing that relationship with communities.

I'm going to ask, from your perspective of someone who's been involved for a long period of time, if you could step back and say, looking at Mississauga and looking at the Oakville plant, what do you believe in terms of what we could have done better, the siting itself—and I appreciate that probably their clients are members of APPRO, so I know that—but again, I'm asking this because I think you've got a lot to offer in terms of your particular perspective and your background around the siting of those two plants.

**Mr. David Butters:** Right. Well, I think that, clearly, we've learned a lot, and I thought that the work that the Ontario Power Authority and the IESO did over the course of the summer on the consultation on siting recommendations was worthwhile and valuable. We participated in that very actively, and I think the recom-

mendations that they came out with, 18 or 19—I don't recollect the exact number; I think there were 19 recommendations—were very sensible, thoughtful.

I think what we really learned is that at the very front end of this, there are two things that we have to do. One is that we have to do a much better job of discussing with the local community what is the real situation, what is the need, what are the choices, and allow them to contribute that. It's my belief and my association's belief that we can't let local objections always trump provincial mandates or needs. That being said, we could do a better job of that. We talk a little bit about energy literacy. I'm not sure how much we can ensure that people have energy literacy, but we could certainly have a more robust, open discussion with them. That would be one thing.

A stronger provincial policy statement that official plans have to take into account—and I think when we look at official plans and official planning, that is a rigorous, active process. People do get involved in that very much, so there's an excellent opportunity for local communities to have these discussions with the help of the OPA and the ministry, presumably.

I think the other thing we can do a better job of is actually, if we're doing competitive procurement, we can make the scoring criteria higher for the kinds of processes that people have been involved in, the permitting they may already have—that kind of thing. So I think if you add those things all up—and I have to say that there's no guarantee. I don't think there's any guarantee ever that you can get these projects through. But I think that would go a long way to helping to manage this issue of what I would call “social friction.” I don't like to use the word NIMBYism because it sounds pejorative to me. What we're really talking about is social friction: different views about how the world should unfold. You can't always bridge those, but we can go a long way to making sure that people make the best-informed judgment they can. I think that's probably where we need to focus.

**Mrs. Donna H. Cansfield:** Well, I don't disagree with you in terms of—I think that, ultimately, people want the lights on; it's just they don't want the power plant too close to them sometimes, and you can understand why. I agree there's social pressure.

There's also some responsibility, too, that rests with the companies themselves in terms of their capacity and ability to engage the public in those conversations, because typically in the past, that hasn't necessarily happened. It hasn't been maybe part of the norm. It hasn't been part of the contract, if you like, that you have to have that social engagement expertise, that you have to have the conversations that need to take place. Sometimes it's the fact that big business walks in, or even private business walks in, OPG, and says, “Well, we know better than you do”—pats you on the head—“and we're going to do it.”

What do you think your organizations have learned from this experience?

**Mr. David Butters:** Well, a couple of things. First of all, I think I would say that our members do have a lot of



experience in this area. Look, they built power plants all over the world, all over Ontario, all over Canada, all throughout the United States. So I don't think it's an issue of them not having the ability. I think they're constrained in some ways by the contracts and the requirements. But that being said, we've thought about this, and I think, yes, we probably need to do a collectively better job at the front end.

And maybe it's not necessarily the respective contractor, the respective builder, whoever—whether it's OPG or it's somebody else. I think that if we're going to continue along the road with central planning and central procurement, then I think the power authority has really got to step up to the plate and take on a lot of that work. At some point, you're going to select a contractor to do it, but you want to lay the groundwork pretty well and make sure—if I could use an agricultural analogy—before you plant the seed, you've plowed the field.

**Mrs. Donna H. Cansfield:** Essentially, I mean, that's changing the rules a bit, and it's not a bad idea. In the beginning, you put out a contract for 250 or 300 megawatts—that's the contract—then you say, "Go find a place to build it." That's what happened in Mississauga. When Mississauga council changed that siting and allowed it to become industrial, commercial and power-based, then that's where they went and that's where they purchased the—but you're suggesting, which is the California model, to do that siting up front, prior to a contract being awarded, as to appropriate sites for different-sized power plants based on need in the area. Is that what you're suggesting?

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**Mr. David Butters:** More or less. I'm not suggesting that we get into central selection of sites—you know, that the government or the Ontario Power Authority go out and purchase a site and say, "That's where we're going to do it." But I think the whole issue of planning from the top down and bottom up would go a long way. At least communities would know and they would have to take that into account in their official plans. As I said, that's an area where people can have a lot of discussion at a municipal level. They'd have to take that into account and then they would clearly know what the options might be for their community.

Then after that, let there be a competitive procurement that finds the best site there for the kind of facility that we're talking about.

**Mrs. Donna H. Cansfield:** Were these the kinds of recommendations that you made when you—I think you were involved with the planning of the new long-term plan.

**Mr. David Butters:** Yes. We made very similar recommendations to the OPA-IESO siting working group.

**Mrs. Donna H. Cansfield:** In the next—what, they're saying 10 or 12 years, maybe 15 years—there's going to be another four million people in the GTHA. Obviously, they're going to need power for a whole host of things. Where is that power going to come from? How do you

plan that power? You have to plan that power now. It takes a long time to build. Yesterday we might have had some surplus, but it's not necessarily there tomorrow. So planning is really essential.

Do you think there's another process or way in terms of planning to involve the municipalities and the regions so they take some responsibility? I mean, sometimes it seems to me that what happens is they sort of say, "Well, we need power but it's not our problem; it's the province's problem."

**Mr. David Butters:** Yes. Well, that always has been an issue. I recollect appearing before a committee looking at Bill 51 some time ago—this was in 2006—and talking about the same issue. With water, roads and everything else, municipalities have to look at that very carefully and make sure that they have that in place before they expand. Not so with electricity, at least in the past.

As I say, I think the recommendations that the OPA and the IESO have put forward—and the government, as I understand, has accepted them—would go a long way to resolving a lot of those issues.

**Mrs. Donna H. Cansfield:** If you were looking at what's happened in the last number of years—I mean, I was involved back in 2005; it's always been of interest to me. Would you say that things have improved in terms of power and the distribution of power in this province?

**Mr. David Butters:** Well, I was at a dinner last night and we were having this discussion. We have come a long way in Ontario, and we should be clear about what we've accomplished. We have reduced our carbon footprint by 65% to 70%. We have refurbished nuclear units that had been given up as basically dead. We have built a lot of new natural gas plants around the province. We're done a tremendous amount of work investing in renewable energy; we brought that to a new level in Ontario. We've invested in the smart grid. When you look at conservation and management, we've made huge progress there. I'm an optimist by nature. I don't think we should stand back and sit on our laurels, but I think we have done an awful lot in Ontario.

When I arrived at APPRO, we were in a deficit situation. We were relying on imported power a lot. Today, that's not the case; we have a surplus. We're long on power today, but that's not going to be the case in the next, let's say, four to five years, once we start refurbishing—and I'm sure we will—the Bruce and the Darlington units. Those are big, chunky units; they'll have to come out of service. And we'll be using a lot of that power.

**The Vice-Chair (Mr. Phil McNeely):** One minute.

**Mr. David Butters:** I think we've done a good job in 98% of the cases.

**Mrs. Donna H. Cansfield:** I agree with you; it's not been without its challenges, but I really do. I look back. I remember with the power workers when we redid the Pickering plant on time, on budget. It's pretty amazing. There are things that we have accomplished and lots to be able to do.



I want to say thank you. I look forward to seeing your recommendations in the long-term plan. I really appreciate your being candid about how you feel we can move forward in terms of better siting, better engagement and making a difference, ultimately, because your job and ours—whoever's in government—is keeping the lights on at the end of the day. Thank you very much.

**Mr. David Butters:** Thank you.

**The Vice-Chair (Mr. Phil McNeely):** That's a good time. It's just 10 seconds left.

We'll go over to the official opposition and Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Mr. Butters, for joining us this morning. I appreciate you coming in and I appreciate the work that APPrO has done and continues to do. I had the opportunity for many years as the energy critic to interact with you and your people on a pretty regular basis. You talked about the premier conference: I certainly and wholeheartedly agree with that. I know you're going to be holding another one in November, and I expect that it will be as successful as all of the other ones in the past.

Ms. Cansfield talked about getting valuable input on this committee as to how we might handle the siting of power projects differently. That's all great, but it's all hindsight. This committee is also about what happened there in Mississauga and Oakville. I know that you, as APPrO, represent, as members of your organization, any and all of the proponents that would be bidding on almost any power project in the province of Ontario. Is that not correct?

**Mr. David Butters:** It's pretty accurate, yes. Perhaps not all.

**Mr. John Yakabuski:** You haven't got them all?

**Mr. David Butters:** I don't claim to represent everyone, but pretty close to everybody.

**Mr. John Yakabuski:** I don't claim to represent everyone either—although, yes, I do represent everyone in my riding. I just don't claim to have their support.

So there are still some outliers out there in energy land that are not necessarily members of APPrO and that still bid on power projects?

**Mr. David Butters:** That's true, yes.

**Mr. John Yakabuski:** On the Oakville and the Mississauga plants—are you a golfer at all, Dave?

**Mr. David Butters:** Fair to middling.

**Mr. John Yakabuski:** Fair to middling? Well—

**Mr. David Butters:** I'm working on it. It's a life's work.

**Mr. John Yakabuski:** That would probably apply to most people in the world and all of those folks at APPrO and those who aren't members today. In golf, there's a saying: "You don't follow-up a bad shot with a bad decision." In public life and in the military, we tend to use the phrase, "When you're in a hole, stop digging." They have pretty similar meanings.

When we talk about the front end—you mentioned having a better process and better decision-making based on the front end. It's clear that in Mississauga and

Oakville, the decisions made on the front end were done not on whether or not the power was needed in those locales—but there certainly wasn't the investigation done as to where the communities stood on these particular projects and at those particular locations. When you look at the Mississauga plant, it was already in progress. They had already started building it when they made the decision to shut it down.

I'm not asking you for your political views on that, because that's not what you're here for. But as a member of an organization that represents providers of power or builders of providers of power—you might say the OPA or the IESO or the OPG are the providers or whatever, but you build the plants. Your people build the power plants or whatever that may be. What was the initial reaction, not about the politics about it, but about the decision to, in the middle of the power plant, say, "Shut her down, boys"?

**Mr. David Butters:** Without knowing—and we don't—the details of every one of those contracts, at a high level, at a principal level, I think the general reaction was of concern. Contracts are the foundation of the kind of investment that we need in the Ontario electricity sector. That's how we've gotten that investment. When you unilaterally change those things, there is concern about it.

At the end of the day, if the buyer doesn't want it, I'm not quite sure what you do. Then it comes down to, how do both sides play that out. I can't offer any opinions on that, but it is of concern. Thinking forward, if it were to become a habit, I think what you would see is a risk premium being built into all of those projects, and ratepayers would pay for that. In general, I think people were—it was like, "Oh, that's of concern."

0900

**Mr. John Yakabuski:** Yes.

**Mr. David Butters:** Then the parties have to figure out how they're going to manage that.

**Mr. John Yakabuski:** Right, and in this case, Dave, the buyer clearly indicated they did want it, because not only was the contract signed, sealed, delivered, but construction on the plant in Mississauga had already begun. So the marriage was consummated, as they say. Maybe they were still waiting for children, but the marriage certainly had been consummated. Somewhere on the honeymoon, in the midst of all the euphoria, the groom decided to bolt. That, I'm sure, was of concern to everyone. That's the Mississauga situation.

Then we look at the Oakville situation, and I'll go back to the golf analogy. You, in your organization, while you wouldn't be directly involved, I don't believe, in any of the decisions, once your members have secured the contract, as you say, your job is to advocate for ensuring that Ontario has an adequate supply of power and that the producers that are best suited to be doing that are the ones that you're working with and they're bidding on those contracts. But the decision, then, in Oakville was, after massive concern in the community on the part of the residents—and this had gone on since 2004 when



the site was chosen by the government. I think, yes, the OPA may have made the announcement, but George Smitherman made the call or Dwight Duncan or one of those two; Dwight Duncan, I guess. Clearly the decision to continue with that was like hooking your drive deep into the woods.

Now, the next question was, "Okay, how do we get out of this?" The decision that they made was, "Well, let's go build a plant up in—where? Napa-what? Napanee?" I mean, how far from Oakville, Mississauga, Toronto do we want to go with a power plant?

Again, I'm not asking you to comment on the politics of the decision, because that's what we do here. But the OPA opposed the decision to relocate at Napanee from a perspective of efficiently providing for the electricity needs of Ontario. Would you be prepared to offer a view as to the decision to—when their backs were to the wall, so to speak—come up with a plan to locate a plant in Napanee based on the additional costs? Have you had a chance to look at the auditor's Oakville report? We do know that just the cost of relocating to Napanee is an additional \$513 million. Could you comment on that?

**Mr. David Butters:** You know, I don't think I could. I'm not close enough to all of the inputs, all of the decisions. So, no, I don't think I could say that clearly that's where it's going—

**Mr. John Yakabuski:** Okay, and fair enough. I understand that.

Now, because you were called as a witness today, I have to ask you a couple more questions. Did you personally, as the head of APPRO, or your organization have any involvement in the decision to cancel the Mississauga or the Oakville power plants? Were you consulted on those?

**Mr. David Butters:** Never consulted and no involvement whatsoever.

**Mr. John Yakabuski:** No involvement whatsoever. So you had no part in the decision to relocate the plants, and you had no part in the decision, as choices of relocation, regarding Samia and Napanee?

**Mr. David Butters:** No, no involvement whatsoever.

**Mr. John Yakabuski:** One other question: Were you involved in any way, shape or form in the attempt to cover up the information from getting out as to what the costs of those cancellations and relocations was going to be?

**Mr. David Butters:** No.

**Mr. John Yakabuski:** No.

Did you have any involvement in deletion of emails to do with anything to do with these decisions: cancellation, relocation and cover-up? Did you have anything to do with the deletion of emails or advise anyone inasmuch?

**Mr. David Butters:** No, I had no involvement in that.

**Mr. John Yakabuski:** No involvement whatsoever.

That's it for me, Chair. I'm going to turn it over to my colleague Ms. Thompson.

**Ms. Lisa M. Thompson:** Thanks very much.

**Mr. John Yakabuski:** Thank you very much, Mr. Butters.

**Mr. David Butters:** Thank you.

**Ms. Lisa M. Thompson:** Thanks for being here, David.

I was taken by your comments earlier in your opening statement, that we need to balance power with clear and measurable outcomes. You alluded to the stronger policy that we need in terms of planning and local autonomy, because there are other sectors of the industry that would benefit from that as well. But we're not here to talk about that today.

One thing I'm curious about is stability in the energy sector. This past summer, we had heard from some authorities that part of the issue that led to the debacle with the Oakville and Mississauga gas plants was the instability. For instance, since 2008, there were six ministers through that portfolio; technically five individuals, but Gerry Phillips cycled through a second time for a mere two months.

I was wondering if you could speak to or share your opinion on, in terms of a long-term vision of where we need to go, what will make the energy sector stable in Ontario, to bring it back as a pillar of our go-forward plan.

**Mr. David Butters:** Yes, I have seen quite a few ministers and deputy ministers, but in fairness, I think one would say that the plan this government introduced when it came into office has been—apart from the Green Energy and Green Economy Act, I think they've stuck to it reasonably well. But, you know, the last point I made in my opening remarks was about political involvement. We're not naive. Electricity is fundamental to our economy; it's essential to human welfare. We're never not going to have political involvement in the electricity sector. That's not the case anywhere else in the world.

I think the question then becomes what that involvement should be, in what way should the people's representatives be involved in the electricity sector, because if you get it wrong, it's a serious issue. I think if we could try to limit that involvement to the setting of long-term policy, long-term plans, as I said, correcting obvious issues—if there's a fault with siting, for instance, it's probably appropriate for a standing committee of the Legislature to look at that and make recommendations. I think that's a perfectly valid thing. But getting down into kind of day-to-day operational issues, the temptation to do that is strong, and I think we need to resist that. We've seen the results too frequently in Ontario's history, and it's not just over the past few years; this goes right back to the early days of electricity, what happens when we get too politically involved in things.

I know that's going to probably be a tough temptation to set aside, but unless we bring ourselves the discipline to do that, I think we are going to continue to—the reality is that those kinds of decisions do have consequences, and they invariably wind up on the account of ratepayers.

**Ms. Lisa M. Thompson:** I really appreciate your comments there. Thank you.

One last thing: When we talk about the long-term energy plan, I trust you participated in a seminar or two



this past summer when they were being hosted around the province. What worries you? When you think about where we're going, do you feel there might be something that could potentially be missed in this long-term energy plan, or what do you hope will be recognized as paramount going forward? What should be the pillars of the long-term energy plan?

**Mr. David Butters:** Well, I have a lot of confidence in the Ontario Power Authority and the planning people there. I think they're professionals and they know what they're doing. There are a lot of people out there providing lots of good information and good thinking about the kinds of things, the options that we have, and how we might put those all together.

I don't think I have any worries necessarily, but I think the central part of the long-term energy plan has to revolve around nuclear refurbishment: What and when are we doing refurbishment at Bruce and Darlington? I'm speculating here, but I'm pretty certain that will take place. But the timing of that will be important, because that triggers everything else: when they come out of service, what other assets we have to have in place, what that means to transmission, all of the construction supply chain behind all of that. To me, that's the critical piece.

0910

And then I think the other part is, where are we going with renewable energy? What's the target? How do we integrate all of that? Those are probably the two big issues for me.

**The Vice-Chair (Mr. Phil McNeely):** Is that—?

**Mr. John Yakubuski:** Yes, we're done.

**The Vice-Chair (Mr. Phil McNeely):** You're done. We'll go to the third party: Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Mr. Butters, for being here this morning. My colleagues have been very efficient. They've asked every question I had planned to ask you, so I'll say thank you, and I turn it back to the Liberals.

**Mr. David Butters:** Thank you.

**The Vice-Chair (Mr. Phil McNeely):** Ms. Cansfield.

**Mrs. Donna H. Cansfield:** I appreciate that the responsibility within this committee is broad and has some other perspectives, but I also know that it is really important that there have to be some definitive recommendations coming out of this committee on how to move forward in terms of engagement and siting. We would be remiss if we don't do our due diligence on that.

I know that you have had, as I said before, significant experience that I appreciate. I was at some of those events this summer as well. There's no question in my mind that the people who are involved in power production from all sectors were very vocal and very candid in their conversations with the energy board, the OPA, and that they heard quite clearly the whole issue around combined distribution, combined heat and power, distributed energy, things we have more work to do on.

I guess my last question to you would be, how do we make sure we follow through, we follow up, and we are ultimately accountable? Those are the things that are

important to me as we move forward—lessons learned. You can't just walk away from here and say it was a committee. We have to come forward with some pretty good recommendations.

**Mr. David Butters:** Well, I think there are two parts to the answer. The first part is, it really depends on you collectively, as legislators and as the government. I think the other part, though, in a plan is that it has to be measurable; it has to be specific. There's an old saying that if you can't measure, you can't manage it. It's got to be measurable, with defined timelines, and it's got to be doable and rational. I think if you have that, if you have the commitment from policy-makers to take a longer-term view and to let the experts do the planning—I'm not saying get out of the way entirely, but only insert yourself when it's really necessary—then I think we probably should be successful.

The energy system is always going to be somewhat out of step with the political cycle and the economic cycle. That's just the nature of the beast. But that doesn't mean that we should throw the strategies out just because they don't seem, at the time, to be quite lined up with reality. I think that's the issue: You have to take a long view on the power sector, because these are assets that are going to be here for decades, and people will continue to pay for them for decades. There's a huge element of public responsibility there.

**Mrs. Donna H. Cansfield:** Right. Therein lies the challenge as well, because ultimately it goes on the rate base and on the ratepayer.

It's interesting. I go back and remember, in 2002, I guess it was, the Tories put together a really good plan around conservation and renewable energy. It was Steve Gilchrist. It was really, really well done. I know because I inherited his office. And then before that, the NDP had put together a pretty good plan as well on how to move forward on renewables, and then we had. You would think we could all get our act together, get the politics out of it and move forward. Ultimately, hopefully, that will be some of the accountability that will come out of this committee.

I thank you, David, for coming in and sharing your thoughts with us this morning.

**Mr. David Butters:** Thank you. My pleasure.

**The Vice-Chair (Mr. Phil McNeely):** Thank you, Ms. Cansfield. We'll go to the official opposition and Ms. MacLeod.

**Ms. Lisa MacLeod:** Welcome to committee, Mr. Butters. It's nice of you to come in today. We'll keep it brief. I think you've been very forthcoming, and I think we've touched a lot of ground.

One of my major concerns—and it's no secret; I've asked several questions about it in the Legislature. I had the opportunity last week to talk to the former Minister of Energy and Finance, Dwight Duncan, about what the cost impact would be on consumers, whether that is a family or a senior on a fixed income or if it's a business or if it's on industry. I'm wondering, in your role with the power producers in the province, have you done an assessment



of what impact the cancellation will have on the bottom line of your producers in terms of cost base?

**Mr. David Butters:** No, we haven't.

**Ms. Lisa MacLeod:** Just in your professional opinion, would you expect a government, when they're making a cancellation of a billion-dollar program, or if they're investing in a program—that there would be a cost analysis done on what that would mean to the rate base?

**Mr. David Butters:** I think it would be prudent to do that, yes.

**Ms. Lisa MacLeod:** Dwight Duncan tells me that this has been done. We've been trying to get it from the government. They say that the Ministry of Energy does this type of analysis, understanding, of course, that the OEB sets the rates, and they're not directly aligned with the government. Have you heard of these assessments being done in the past by the Ministry of Energy or the Ministry of Finance, whether it's this issue or any other issue?

**Mr. David Butters:** I'm not aware of whether—I don't think we've been faced—I'm trying to think back over my tenure; I don't think we've had this situation arise. The last time that we had a significant—it wasn't even a cancellation; it was just a postponement and a cost overrun. It was Darlington. But of course, that was on the account of Ontario Hydro at the time, and it's still there—a large part of it, anyway. It's in the stranded debt.

**Ms. Lisa MacLeod:** What do you think the overall implications are in terms of the production costs as well as the reliability of power in the province when a decision like this is made and then radically altered, as it has been with respect to Oakville and in terms of Mississauga as well?

**Mr. David Butters:** Clearly, it's an issue of interest to everybody, and a concern—I would think it's of some concern: how it was done, what the costs were, what the costs will be. As I said, the reality is that that will wind up being picked up by ratepayers in some fashion or other.

I'm not sure I could speak much more to it other than to say that if I were a citizen, I think I would be paying attention to it. On the other hand, in the larger—and I don't want to belittle this or demean it or make it sound as though it's not important. The value of the installed capacity that we have in Ontario is probably—the replacement value has got to be north of \$100 billion—\$120 billion or \$150 billion. And those long-run costs are all inside the electricity cost in some form or other. It might actually be hard to quantify the precise—is it 0.007 cents or is it 0.008 cents? I don't know. But I can't see any reason why you wouldn't want to look at that and say, "Actually, it's a very small impact," or, "It's a very large impact."

**Ms. Lisa MacLeod:** Right. I just have one other question. Sometimes when I come to this committee, I think about not only my role as energy critic and a member of this justice committee that's probing these gas plants, but I also think about my duty as the member of

provincial Parliament for Nepean–Carleton. My community is right now fighting this wind turbine development. We want to be declared, in the city of Ottawa, as not a willing host. It's funny, because my riding is the largest in the city of Ottawa. The community of North Gower used to be part of Rideau township, but in 2000 it was amalgamated into the big city of Ottawa. I'm one of those rare people who actually represents a rural, suburban and urban community inside a major city. This community of North Gower was out there on Saturday, and of course they want to be declared not a willing host.

My colleague Lisa Thompson, who's the member for Huron–Bruce, also has to deal with these wind turbines as well, and she made a point in the Legislature two weeks ago that it depends on your postal code whether or not you're being listened to as not a willing host. And I can't help but agree with her, because I feel that in Oakville and Mississauga, folks were very persuasive in saying that they weren't interested in having these gas plants in their community, yet I think that we would both agree that gas-fired generation is actually more important to the supply chain in Ontario than wind is, certainly when you look at what the IESO says on a daily basis in terms of the capacity and what we can use and generate.

I'm just wondering, in terms of the approach that the government has taken on wind development, do you feel, in your estimation—and I understand that I may be putting you in a difficult spot, but do you feel that the government's approach on wind energy is so rigid that they aren't listening to those communities, compared to what they were willing to do in Oakville and Mississauga?

**Mr. David Butters:** That is a difficult question.

**Ms. Lisa MacLeod:** I'm just warming up for Colin Andersen this afternoon. Did you get that, Murray?

**Mr. David Butters:** I guess what I would say, when I look at all of these technologies, is that I think of them as kind of—they're all my children. Whether it's nuclear, water, wind or solar—whatever—we think that they're all important sources of energy.

To go back to the discussion that I was having with Ms. Cansfield, I think there's no question that we can do a better job on community relations and siting. Is there going to be less renewable energy in the future? No. That's the direction the world is going in; we're going to have more of it, likely. The question then comes down to where it is best placed and how we make sure that we have the right kind of engagement so that the kinds of issues that you're raising don't get in the way of doing that; in other words, that we can find accommodations to do that. If we don't find accommodations to do that, I think that what we will see is more and more communities feeling that they have to become unwilling hosts because it's being forced on them.

What the government has said with regard to FIT 2 was that they were going to provide a larger—take into account in a more robust way community engagement. But to me, that's the key part: making sure that people understand what's in front of them, what their choices



are, that they can't—how would I put this? It's going to be futile to try to force things on people in communities. Clearly, that doesn't work, so we'll have to find accommodations. I'm not quite sure what those accommodations will be in every circumstance, but sometimes it's going to be a trade-off. Perhaps wind is not a good example, but if it's a gas plant, it's going to be either, well, it's this or it's transmission, or you don't get to expand your community. Those are the kinds of things that we have to be a little more clear about. Wind, I think, is a little different because it tends to be in more rural areas, distributed, and some communities like it and accept it.

So there's a balance that we have to find there, but community engagement is hugely important.

**Ms. Lisa MacLeod:** Would you say it would be—

**The Vice-Chair (Mr. Phil McNeely):** One minute.

**Ms. Lisa MacLeod:** Thank you. Would you say, then, that it would be fair for the OPA to expand its decision-making on siting or the government's decision on siting to include all forms of power in terms of that engagement: not just gas plants, but also wind development or whatever else?

**Mr. David Butters:** I think so, yes.

**Ms. Lisa MacLeod:** Okay. Thank you very much. I appreciate it.

**The Vice-Chair (Mr. Phil McNeely):** Thank you. We'll now go to the third party. Mr. Tabuns.

**Mr. Peter Tabuns:** You're very generous, Chair, but my questions have been answered, so I will give it back to you.

**The Vice-Chair (Mr. Phil McNeely):** Thank you very much, Mr. David Butters. That seems to be the end of the questions.

The committee is recessed until 3 p.m., when we will be having Colin Andersen in here.

*The committee recessed from 0924 to 1501.*

## ONTARIO POWER AUTHORITY

**The Vice-Chair (Mr. Phil McNeely):** The Standing Committee on Justice Policy will reconvene for the 3 o'clock afternoon session. We will have the swearing-in of the witness, Mr. Andersen.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Colin Andersen:** I do.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Thank you.

**The Vice-Chair (Mr. Phil McNeely):** You have five minutes for your opening statement. Welcome to the committee. Following that, the official opposition will start the 20-minute rounds. You may proceed. Just start with your name, sir.

**Mr. Colin Andersen:** My name is Colin Andersen. I'm CEO of the Ontario Power Authority.

Good afternoon, everybody. I'm happy to appear again before this committee to assist you in your deliberations on the issues dealing with the relocation of the Mississauga and Oakville gas plants. You'll recall that when I appeared before you on April 30, we had just received the report from the Auditor General in which the decision to cancel the Mississauga plant and relocate it to the Sarnia area was estimated to cost about \$275 million.

At that time, I testified that the OPA estimated the cost of relocating the Oakville plant to Napanee to be \$310 million, but I noted that the cost estimates would continue to evolve. As you are aware, the Auditor General's report released earlier this month estimated that the relocation of the Oakville plant may cost \$675 million. The OPA respects the Auditor General's work, but we do stand by our methodology. The difference between our two estimates is largely attributable to the assumptions used to calculate future costs and savings, specifically on discount rates and in-service dates that are assumed in the calculations.

The Auditor General's report states that two thirds of the cost and 100% of the savings associated with the Oakville relocation will occur in the future, so these are forecasts, as are ours. The approach used in the report lowers the savings associated with having the Napanee plant up and running later than when the Oakville plant would have been in service.

As I said the last time I was here, these two plant relocations have been some of the most complex files that I've worked on in my 25-plus years in public service, and I want to assure the committee that the OPA takes its responsibilities very seriously. Every day, we strive to ensure that reliable power will be available when needed and where needed, and as cost-effectively as possible. To that end, we have well-qualified and experienced professionals who work diligently to plan, procure and conserve to ensure that we all have available to us the electricity that is such a vital underpinning of our daily lives, our businesses and our economy.

We've had many successes in recent years which sometimes get overlooked. Witness the significant turnaround in our supply situation that the OPA played a big part in. Electricity projects have been successfully implemented throughout the province and have played a big part in creating much-needed jobs and modernizing aging infrastructure.

That being said, we also have lessons learned on a number of fronts that we are already starting to put into practice where we can. To that end, I would reference that the OPA, together with our Independent Electricity System Operator, and with the extensive input from more than 1,250 stakeholders, have submitted 18 recommendations to improve the way large energy projects are sited. As a reminder, I have asked the Clerk to distribute a two-page summary of these recommendations and I would be happy to address them further. That's the green and blue page that you have in front of you.

This work speaks to one of the mandates of this committee, and I'm pleased to say that the Premier has



accepted all of the recommendations and we are now working with the government and local communities to finalize an implementation plan.

As well, I would like to note that the OPA has been consistently co-operative with the work of this committee. The six witnesses from our organization who have testified before you endeavoured to answer your questions as fully as possible. In addition, the OPA has submitted more than 110,00 pages of documents in response to motions from legislative committees. We're continuing to process more documents in an attempt to comply with your August 27 motion as quickly as possible.

I'm sure you have many areas that you will wish to explore this afternoon, so I will limit my opening remarks to allow you more time to do that. Thank you.

**The Vice-Chair (Mr. Phil McNeely):** Thank you, Mr. Andersen. We'll go to the official opposition and Ms. MacLeod.

**Ms. Lisa MacLeod:** Welcome back, Colin. It's nice to see you, and I appreciate you taking the time to visit with us today.

I have a couple of questions with respect to, again, going back to cost, particularly in light—we haven't talked to you in this committee since the auditor's report came out, so it gives us an opportunity to do that. We also heard from Serge Imbrogno last week, and he also shed some light on what people would have known and when they would have known it.

If you don't mind, I would like to actually sort of start with Serge, because as the deputy minister to the Minister of Energy, he claimed that the ministry and you at the OPA would have known as early as December 2011 that the cost would exceed \$700 million at that time. I'm just wondering, would that information have been available to the Premier and to the cabinet at the time?

**Mr. Colin Andersen:** I can't speak to what would have been available to cabinet. I can talk about what we would have talked about with the ministry at the time. We should be clear that in the December period, what we were talking about at that point—in December 2011, we're in the middle of arbitration discussions, which are actually looking at potential damages that might be paid to the company should we not be able to renegotiate a relocation.

There are two different things, right? If you relocate a plant, that's one thing, one set of costs. Of course, in December 2011, we didn't have a site identified—Napanee—so we wouldn't have been able to have the costs in detail for the Napanee site for a relocation at that point in time.

The \$700 million that you're talking about, it's actually a bit apples and oranges, because the arbitration amount would have looked at what we might have potentially had to pay out in cash if we hadn't negotiated a relocation and another alternate project.

**Ms. Lisa MacLeod:** Can we go to the location then? I do have a couple of other questions on costs, but let's go to the relocation.

**Mr. Colin Andersen:** Sure.

**Ms. Lisa MacLeod:** In the Auditor General's report, it states that the OPA did not think that the Napanee location was the optimal choice. Is that correct?

**Mr. Colin Andersen:** That's right.

**Ms. Lisa MacLeod:** You had indicated to the government that that wasn't perhaps the best move on behalf of OPA and the ratepayers?

**Mr. Colin Andersen:** Well, it wouldn't have been our preferred site from a system perspective. We had others that were on our list.

If we had had our druthers, I think we would have actually liked to have relocated the plant within the GTA. We've said before that we think a plant in the GTA would have system value. That was taken out of the equation early on, and the decision to relocate the plant outside—and then, as you've seen in a number of the documents, we turned our attention to the Cambridge area, because we felt that that was an area that could use a gas plant, albeit a smaller size.

We also looked at Nanticoke, and we looked at Sarnia. I would say those were our preferred. Of course, we were looking at relocating two plants at the same time. So you have to—you make one decision, it has ripple effects on the other. So Napanee was further down the list.

**Ms. Lisa MacLeod:** Can I ask you just a quick question? In terms of your optimal location in the GTA, did you have an actual spot in the GTA or several?

**Mr. Colin Andersen:** A specific site?

**Ms. Lisa MacLeod:** Yes.

**Mr. Colin Andersen:** No, no. Obviously, at very early days, Lakeview was a possibility that would have made a lot of sense because it already had the infrastructure. We had talked with some of the citizens, the C4CA folks and others. Ideally, we would have been able to work with the community to potentially find another site within the area, because we still feel we have good reasons why a plant would make sense in Toronto, respond to severe weather and conditions like that.

**Ms. Lisa MacLeod:** Why did you choose to forgo the other four areas: GTA, Cambridge, Nanticoke and, of course, Sarnia? Can you enlighten us?

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**Mr. Colin Andersen:** Early on in the process, I think it was Minister Smitherman who had taken the Lakeview plant out of the equation when it was decided that that plant was going to be closed, even though OPG had been doing some work about potentially redeveloping that project. So that was taken out of the equation early on. Then when Minister Duguid announced the cancellation of the Oakville plant, he said it would not be relocated in the GTA, so that took Toronto out of the equation.

Then we went back and looked at our province-wide plan and said, "Okay, where have we already identified a need for a plant that we haven't procured yet?" and that led us to Cambridge.

Then, ultimately, we were looking for sites that had a good probability that the community would accept them, so that led us to Nanticoke and Sarnia.

**Ms. Lisa MacLeod:** So basically, Napanee was the last kid to be picked for the soccer team.



**Mr. Colin Andersen:** Your words, not mine.

**Ms. Lisa MacLeod:** I will note the grin. Who made the decision, then, to locate the plant in Napanee?

**Mr. Colin Andersen:** Who chose the Napanee site?

**Ms. Lisa MacLeod:** Yes.

**Mr. Colin Andersen:** Ultimately, it was the minister. I mean, we gave advice on a variety of different sites.

**Ms. Lisa MacLeod:** Can you state the minister's name for us?

**Mr. Colin Andersen:** That would be Minister Bentley at this point in time.

**Ms. Lisa MacLeod:** Chris Bentley chose to go to Napanee?

**Mr. Colin Andersen:** Yes. We had provided advice on a number of different sites. We were focusing on the physical infrastructure that was available, and he had other considerations as well, like willing host and that kind of thing.

**Ms. Lisa MacLeod:** What other areas of concern would he have brought to make his decision?

**Mr. Colin Andersen:** Certainly the availability of infrastructure was a real consideration. For example, when we were looking at the Nanticoke site, we thought that that would be a good location for the Mississauga plant because it was a smaller plant and we knew that the pipeline capacity in Nanticoke could accommodate a 300-megawatt plant. To accommodate a larger plant, there was going to need to be a pipeline build-out and there would be issues associated with getting that pipeline into the ground. That's an example where whether or not there's actually existing infrastructure can tip the balance. And you want to have the wires available, the transmission wires, for example.

Ultimately, our experience in Cambridge—a smaller plant was what was needed there, so we were trying to sort of shoehorn a larger plant into a smaller size, and it was going to be a brand new greenfield site, so there wasn't any existing site there. We started looking around and thought that a place that already had a gas plant, it being on an OPG site because the province was the shareholder, could also help smooth things along with locating it on the actual land site itself. Those are the kinds of things we were looking at.

**Ms. Lisa MacLeod:** What were your major reservations at the OPA with respect to the Napanee site?

**Mr. Colin Andersen:** Ultimately, we felt it could be a viable site. Like I said, we had other preferences. Certainly, the fact that it was—

**Ms. Lisa MacLeod:** So it was number 5 of your top 4?

**Mr. Colin Andersen:** Well, I don't know what number I would attribute to it, because, like I say, you make one choice and it sort of reorders everything depending on what's available.

When Nanticoke went to the smaller plant, or when the smaller plant went to Sarnia, that sort of reconfigured our preferences. So, yes, we had to take other considerations into mind. It was in eastern Ontario. We're always conscious of power flow that comes in from Quebec. We're monitoring the nuclear situation with Pickering

and Darlington and the current state of infrastructure going into eastern Toronto, so those are the kinds of things that are considered. Obviously, the plant is farther away, and that's an issue.

**Ms. Lisa MacLeod:** Did anybody consider cost at any time?

**Mr. Colin Andersen:** Well, we did, but to get a firm estimate on cost for a plant like this, it usually takes about 12 to 18 months. You have to do some fairly detailed engineering work, some of which can be quite specific to the site itself.

For other things like the gas delivery and management, we had sort of a rough idea. We were using roughly two times the cost. It turned out to be closer to three times the cost for the gas delivery and management. But we also had a rough idea of some of the savings that might be associated with that.

We were doing the best that we could during the month of September 2012 with a plant location that had largely been settled on—I can't remember if it was the Thursday or the Friday before the weekend that we were finalizing a lot of this. Those are the kinds of things where there's a certain number of costs that you know, that you can actually figure out right off the bat, and then you do what you can to try to mitigate the risk on some of the others.

**Ms. Lisa MacLeod:** What about the cost analysis to the ratepayer at any point in time? You would have paid \$210 million already, according to the auditor, on the turbines. So you would have known there would have been a cost impact well above \$40 million. I think there were some antics being played by Dwight Duncan, Chris Bentley and others who said, "Okay. Well, it's \$40 million." That was to the taxpayer, but then the ratepayer, who is largely the same person, was going to have to pick up what we now know to be close to a billion dollars, if not more.

At any time, did any consideration occur either with the Ministry of Finance, the Ministry of Energy or within the OPA of how that would impact the rate base and the ratepayer?

**Mr. Colin Andersen:** Absolutely. Certainly at our board, we had lots of discussions about both plants with regard to what would be the impact of these decisions on the ratepayer, and because they were government decisions, it was a real discussion as to how much would the taxpayer pick up and how much would the ratepayer pick up. They're two very different situations because one of the plants, the Mississauga one, was already one third of the way constructed. So we anticipated that the sunk costs for that one would be much greater than for the other plant that hadn't put a shovel in the ground yet.

I had flagged with the ministers that we felt that the ratepayer/taxpayer question was an important one. It might not be one we were going to be able to answer right away, but it was one that needed answering. You've probably seen some letters—

**Ms. Lisa MacLeod:** And could you provide that to our committee today, to members of this assembly, what the impact will be per ratepayer? Can that be done?



**Mr. Colin Andersen:** As of what time would you like? As of the current—

**Ms. Lisa MacLeod:** Well, I guess now that we know the auditor's report, if that was provided to us—we're having a difficult time getting that information. How much is the elderly couple living on a fixed income in an Edwards trailer park just outside of Ottawa paying on their power bill when they're not able to turn it on during the day because they simply can't afford it? So I want to know that.

**Mr. Colin Andersen:** Yes, we have estimates that we can provide, but it's more—just to say in advance, it's on an average ratepayer basis. You do have to make some assumptions because there's no actual average ratepayer. Everybody uses a different amount of electricity, but we can provide that, sure.

**Ms. Lisa MacLeod:** I want to just continue on the costs here—and I think we only have about six or seven minutes left, and I want to make the most of it because I really do appreciate you coming here today, and that information is very valuable to me so we can get that out to the public.

When the decision was made to cancel the plant—this is something we've mentioned quite a bit of the time, and in the auditor's report, it's actually mentioned that there was a cabinet minute that was signed—it was actually signed by the current Premier—that effectively hindered your bargaining power and I think effectively hamstrung you because the Premier's office at the time wanted to make TCE “whole” in the arbitration process, meaning they wanted to make sure that they didn't lose anything out of this. I think, and I think most people in Ontario would agree, they handed a lot of the bargaining power away from you to TCE.

You were at that point, I assume, operating under the directive of the ministry or the Premier, and when it came to relocating the plant, they decided to forego your recommendation of where to actually place the plant and they chose the most expensive option in Napanee. Is that accurate?

**Mr. Colin Andersen:** I'm not sure if I would say it's automatically the most expensive location. We should be careful here as well in that we're talking about a company—we're kind of melding a couple of things here. There's the renegotiation process and then there's an arbitration process and certainly commitments and discussions that had been had between TransCanada and the Premier's office and their understanding that there would be a negotiation for a replacement project, that it would be an equivalent of some sort. People use the words “made whole.” That set a context for what came later—

**Ms. Lisa MacLeod:** Would you have guided that process or would those directives have come—

**Mr. Colin Andersen:** Pardon me?

**Ms. Lisa MacLeod:** Would those directives have come from you, in other words, or would they have come from the Premier's office?

**Mr. Colin Andersen:** They weren't directives per se, but it was the result of meetings that TransCanada and

the Premier's office had, the outcome of which we then acted upon after checking.

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**Ms. Lisa MacLeod:** But you didn't direct it? You didn't have those discussions? That was the Premier's office.

**Mr. Colin Andersen:** No. Those were discussions that set the parameters for what came later.

**Ms. Lisa MacLeod:** Do you have any idea why the Premier's office or the Ministry of Energy would take such a hands-on approach to this? Presumably the OPA was created in order to avert that type of an issue, would you not agree?

**Mr. Colin Andersen:** That's right, but it's not uncommon for political offices to deal with stakeholders of a variety of types. Obviously, they would have seen that there were issues being raised in Oakville and Mississauga about the plant, so I think it's understandable that they would be meeting with a variety of people. We always feel that it's important, though, when talking about contracts, that the people who know the contracts are involved in those discussions.

**Ms. Lisa MacLeod:** Does that sort of complicate your position? I'm just asking for your professional opinion. You signed on to this OPA gig. You would have thought you were in charge of power planning in Ontario without any political interference, yet in this case it became a very costly political interference.

**Mr. Colin Andersen:** Yes. Let's be realistic and pragmatic here. I think once a contract is actually—we ran an RFP process, and a RFQ process before that, and then we awarded the contract. And along the way, we had provided off-ramps to the government but had consistently said that we still felt that a plant should be in the area. Once a contract is in place, I think it's very important—and we take this very seriously—that we support the contract. It's a legal document, and we have to be fair to the counterparty.

That being said, when you start to see local opposition and other considerations, you try to find an alternative, and hence the desire to negotiate with the counterparty, and because we were the legal counterparty, we were the ones to do that.

**Ms. Lisa MacLeod:** The auditor said that, between I think it was 2009 and 2010—that within the existing contract and because of the local opposition in Oakville, particularly by the mayor and council, and they were very effective in placing a lot of obstacles—that that would have delayed the construction of the plant and that would have delayed the process, and that every legal option that could have been used by the mayor would have been done—because he has said that—just in order to halt the construction.

Had that process been followed, which would have probably taken, according to the AG, about 24 months or two full years, we could have escaped without any penalty. Were you aware of that provision in the contract with TCE?

**Mr. Colin Andersen:** Of course, we were aware of all of the provisions in the contract—



**Ms. Lisa MacLeod:** That's important. If you were aware of that provision, at any time did you advise the Premier of Ontario, the Premier's staff of Ontario, the Minister of Energy, the Ministry of Energy staff or any departmental officials that that was in that contract, so that they could have made a better decision that would have not cost Ontario taxpayers \$1 billion?

**Mr. Colin Andersen:** Well, our contracts are a matter of public record. When we do an RFP process, we draft them—

**Ms. Lisa MacLeod:** But did you advise them?

**Mr. Colin Andersen:** Yes.

**Ms. Lisa MacLeod:** Because we're just trying to figure out whose fault this is, and I actually feel very sympathetic to you. I think that they're throwing you under the bus. I'm just wondering, did you at any point in time tell them, "Hold on, guys. We're going down a very difficult road"?

**Mr. Colin Andersen:** I don't remember how specific it would have been, but we would have said that if the process runs its course, it will take a number of years. I remember saying that—

**Ms. Lisa MacLeod:** But you warned them that they could get out of this without having to pay that massive penalty or making TCE whole, whatever words you're going to use? Is it fair to say that you warned them that there was a risk?

**Mr. Colin Andersen:** Well, as we were going through all of the various options with regard to should we get out of this project and what are the implications of it—we would have to get transmission in place instead, and a variety of things like that. So we would have said that there were possibilities for this just playing through and then see what happens, because the onus is on the developer—

**Ms. Lisa MacLeod:** And they just made that decision?

**Mr. Colin Andersen:** —to get their permitting and their approvals, and the government decided to act earlier.

**Ms. Lisa MacLeod:** Okay. Thanks, Colin. I appreciate it.

**The Vice-Chair (Mr. Phil McNeely):** Thank you. We'll now go to the third party and Mr. Tabuns.

**Mr. Peter Tabuns:** Mr. Andersen, thank you for being back here today.

I'm going to go to the period when the Oakville plant cancellation was announced. You were informed that this plant was going to be terminated. By whom?

**Mr. Colin Andersen:** I think you asked me that question the last time, too. I've been going back in my memory because I very clearly remember the Mississauga one. I'm less clear on remembering the Oakville one. Over a period of time, we would be getting questions asked on a variety of things, so I'm pretty sure that it was either a combination of David Lindsay, the deputy, Craig MacLennan—one or the other of them, either in a meeting or on a phone call. They would have said, "Yes, we're actually getting ready to announce this week that

the plant is not going in." It would have been pretty close to the actual announcement time.

**Mr. Peter Tabuns:** So about seven days before the announcement?

**Mr. Colin Andersen:** Maybe around that, give or take.

**Mr. Peter Tabuns:** Okay. You were given seven days' notice, approximately, that this plant was going to be cancelled. You just said, in response to Lisa MacLeod, that you'd confirmed that there was a make-whole commitment. How did you confirm that?

**Mr. Colin Andersen:** Like I said, there had been speculation back and forth. You get information requests and you start to think, "Okay, it sounds like they may be considering doing something about this plant." Whether or not it was seven days exactly or something like that, I don't know. But what we did hear quite specifically was that the Premier's office and TransCanada had met, an announcement was going to be scheduled later that week, and the idea was that we would be proceeding with negotiations for TransCanada to find an equivalent type of project. They wanted to do the announcement. They wanted TransCanada to be supportive of the announcement. To that end, TransCanada, not surprisingly, had said that they wanted to get something in writing.

So we drafted a letter which was consistent with our understanding of the contract and started the process of sending the letters back and forth to—Calgary, I guess, is where they were. Those documents have been released, so if you read your way through them, you'll see that the final letter was quite different from the original letter.

Over time—and we were c.c.-ing Craig MacLennan and Sean Mullin as we were going through the drafting process—it became apparent, and TransCanada's lawyers were saying, "Well, that's not consistent with the deal or the discussion that has been had." So they started to give us wording about what should go in.

Ultimately, we ended up on the phrase "anticipated financial value of the project," which goes beyond what the contract would have allowed.

**Mr. Peter Tabuns:** Yes, that's correct.

**Mr. Colin Andersen:** Before I would sign something that had that phrase in it, even though TransCanada was telling us that this was consistent and we had been c.c.-ing people along the way on the wording of the letter, we also asked Ben Chin, our VP of communications, to confirm with the Premier's office that that had been, in fact, the understanding that had come out of that meeting.

I think the understanding was always an equivalent project. People use different phrases like "made whole" and that kind of thing, but certainly the idea and the accepted wording that had been brokered around that had to go into the letter, ultimately, was "anticipated financial value of the project."

**Mr. Peter Tabuns:** Did you get a direction in writing from the Premier or the Minister of Energy saying, "You will give them"—

**Mr. Colin Andersen:** No.

**Mr. Peter Tabuns:** So this was all verbal.



**Mr. Colin Andersen:** Well, there's an email trail of letters going back and forth, but a lot of it was verbal.

**Mr. Peter Tabuns:** Was there ever a letter, an email from the Premier or the minister to the Ontario Power Authority as a corporation, directing them to act in this manner?

**Mr. Colin Andersen:** No.

**Mr. Peter Tabuns:** How did your board process these verbal instructions?

**Mr. Colin Andersen:** We called together a teleconference—at least one; I can't remember if we had more than one—and we had a long discussion about this, because we're the legal counterparty—

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**Mr. Peter Tabuns:** Yes, you are.

**Mr. Colin Andersen:** —and the government actually didn't have the authority to cancel the project, so we had a long debate about whether or not I should sign the letter. In the end, we decided that because of the very strong intent—stated, clear intent—of the government that the project was not going to go forward, and because of the commitments that we felt had been made with regard to keeping TransCanada whole, we thought that ultimately, it would be best for us to participate and negotiate our way out of the situation. The alternatives were potentially litigation, potentially legislation. Neither one of those, we thought, would either be fair to the existing counterparty or would say very good things for investor confidence in future RFPs. We thought that taking a stab at doing a renegotiation, we would be best placed to do that. We were quite optimistic that we would be able to negotiate a replacement project, essentially like-for-like as much as possible, and that that would be best for the ratepayer and ultimately fair to the counterparty as well. Hence, our decision to go ahead and have me sign the letter.

**Mr. Peter Tabuns:** Did your board set up a sub-committee to do due diligence on this, to look at the impact on the OPA and the impact on ratepayers?

**Mr. Colin Andersen:** No. This was all happening over the course of a few days, from the time that the government and TransCanada had met and the decision had been made. We were under a lot of pressure at the time because we were effectively told that the minister's announcement was already scheduled and that he certainly wanted the support of TransCanada. I would say that even though we were asking for more time, the pressure was, "No, the announcement is going to happen, so get the letter done."

**Mr. Peter Tabuns:** Just out of curiosity, why was it such a rapid process? You're a fairly big institution in all this. You actually have the signed contract. You were given—let's say 10 days, to be generous—

**Mr. Colin Andersen:** You would have to ask the government with regard to the timing imperative of the announcement, because that was what was driving the need to have a letter signed by both TransCanada and ourselves before the announcement went ahead.

**Mr. Peter Tabuns:** And they didn't convey that to you?

**Mr. Colin Andersen:** They did convey to us—

**Mr. Peter Tabuns:** Sorry, they didn't convey why things were moving as—

**Mr. Colin Andersen:** We knew, right from the get-go, that the minister was going to be announcing this in a few days and that TransCanada needed a letter that would give their lawyers confidence with regard to the way forward. That process actually took a few days, to draft that letter, because like I said, we started off in a very different place with the first draft that we did because it was based on what was in the contract, not going beyond the contract, which was ultimately what the meeting between the Premier's office and TransCanada had resulted in.

**Mr. Peter Tabuns:** Did you convey back to the Premier's office the financial and legal risks that were faced?

**Mr. Colin Andersen:** It actually took a little while for us to realize what had actually been committed to or what the understanding was because, of course, to us, we thought that the letter that we wrote was actually consistent with "Okay, this is what you're entitled to under the contract," so we wrote a letter that way. It was only over time that we started to see that actually, they were entitled to more than just what the contract would have provided, and that's where you get into the lost profit side. It took several iterations to actually get to that point, and several days.

**Mr. Peter Tabuns:** Were you legally obliged to follow these instructions, the verbal instructions coming from the Premier's office?

**Mr. Colin Andersen:** No. They weren't—once a contract is set, the government doesn't actually have the authority to direct us any further on something like this, which was a big part of our board discussion. We flagged that with them, but again, it was very clear that the government and the other parties had decided this plant wasn't going ahead, and we did feel that the best way for the plant not to go ahead was to try to negotiate a relocation as opposed to going through a long litigation process or have the government having to legislate the plant out of existence. We thought neither of those would be good for investor confidence or fair to the existing counterparty, and we thought that ultimately they would probably be more expensive for the ratepayer.

We thought the best path would actually be to give TransCanada a letter and then try to renegotiate a plant that was as much like-for-like as possible, to put them back into the same place they were before the decision.

**Mr. Peter Tabuns:** How are you normally given instructions? I saw a ministerial directive for the 2008 RFP. I saw a ministerial directive to put a plant at Napanee. I haven't seen a ministerial directive for a plant in Sarnia yet.

**Mr. Colin Andersen:** Well, it varies, and it depends on the existing authorities. We ourselves don't have our own procurement ability; we do need to get that from a



minister, and we do look at the existing authorities that we have. For Oakville, because of the change of location, we did need to get a new directive. A lot of it depends on the very specific wording of the directive, if it's geographic-specific or something like that, which is why we had to get a new directive to go to the Napanee area.

The Mississauga one, I can't remember specifically—but generally speaking, we do. I can look into it for you, if you'd like. We do need directives. Sometimes they're a little more broadly worded, and it gives us more room to manoeuvre than others.

**Mr. Peter Tabuns:** I did see the letter from Chris Bentley to the OPA directing discontinuation of the Mississauga plant. Do you often make significant decisions based on verbal communications from the Premier's office?

**Mr. Colin Andersen:** No. That being said, we do get direction—small-d direction—in a variety of different ways, right? Different instruments have different legal meaning, and a directive is the clearest one because it ties back to authorities under the Electricity Act.

**Mr. Peter Tabuns:** Right.

**Mr. Colin Andersen:** A letter from the minister doesn't always have legal impact, although it is a clear, stated intent on the part of the government that they expect us to act on. Sometimes we get letters from the deputy; sometimes we get emails from ministry staff. So we can get small-d direction in a lot of different ways, but generally, where we feel it's necessary, we do consult with our legal branch to say, "Okay, do we actually have the authority to go on this," and if not, strictly speaking, the legal authority, why would we do this? What more do we need?

**Mr. Peter Tabuns:** Yeah. So in the case of the Oakville cancellation, you were given verbal direction through Mr. Chin to terminate the agreement, start a negotiation process and abandon all the legal defences in the contract—make TransCanada "whole." Did your lawyers say this was fine?

**Mr. Colin Andersen:** Well, you know, I would say we were reluctantly signing a letter to this effect. At this point, there's not time to do a detailed legal analysis, but there was a feeling that perhaps there was some exposure. We weren't in on the meeting—

**Mr. Peter Tabuns:** No, you weren't.

**Mr. Colin Andersen:** —so we didn't know the extent of the discussion and if the government could essentially have been sued because there was a verbal contract or something like that. Again, we turned our attention to, "Well, let's look at the way forward, and do we think we have a good possibility of negotiating a like-for-like?" That's plan A. If you don't manage to do that, you always have to be cognizant of where things might go if you aren't able to renegotiate to everybody's liking.

**Mr. Peter Tabuns:** So you didn't have a legal opinion?

**Mr. Colin Andersen:** No. We have legal staff who would have been involved in helping me in the drafting of the letter. That's who did the drafting, and that's why

the first draft was consistent with what the contract said. Like I said, as time was moving along, we were getting the strong pressure—"The announcement is happening, or it's coming. Why isn't the letter done yet?"—that kind of thing. Hence, "Okay, well we're going to have to check. Is this really what people felt was the commitment?" "Fine, get an equivalent project," and that means anticipated financial value of the contract that goes along with that.

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**Mr. Peter Tabuns:** So effectively, the Premier's office staff or the Premier—I don't know; you weren't involved in those meetings—negotiated with TransCanada without being aware of the contents of the contract and the legal protections that were set up for the ratepayers in Ontario. Is that correct?

**Mr. Colin Andersen:** Yes, I would say they were definitely having discussions that weren't looking at the contract. TransCanada would have been familiar with the contract. They certainly felt that there was an agreement. I'm not sure what the Premier's office ultimately felt that they were doing at the time, whether they were having discussions or whether they were, in fact, negotiating, but the end result that came out of all of this—like I said, we checked on the drafting of the letter, and then we actually had somebody check with the office themselves before we signed. I think there was that strong feeling that this was the direction to go in.

**Mr. Peter Tabuns:** Sorry, just again: Who in the OPA checked with whom in the Premier's office to make sure that this was all okay?

**Mr. Colin Andersen:** It was Ben Chin, who was our VP of communications. I don't actually recall which person in the Premier's office it was. I presume it was Sean Mullin. I think that's who it was, but it might have been Jamison Steeve.

**Mr. Peter Tabuns:** Okay. How much time do I have left?

**The Vice-Chair (Mr. Phil McNeely):** Three minutes.

**Mr. Peter Tabuns:** The next area I wanted to explore with you was the endgame negotiations with TransCanada for the new plant at Napanee. The cost of the gas delivery and management is a very significant part of the extra cost that we have assumed. Your calculations aren't that far off from what the auditor came out with. Did you agree on your own to take over these very large costs, or were you directed to take over these very large costs?

**Mr. Colin Andersen:** It was part of the negotiation process. There are gives and takes on a variety of sides. As I mentioned, the Napanee site was chosen a few days sort of in the middle of the negotiation process, and nobody had time to do due diligence on these. From TransCanada's perspective, they said, "Well, the decision to relocate wasn't ours, so why should we take on those incremental costs?" That seemed like sort of a fair statement, but also, we wanted to make sure that we could mitigate those costs. There are two different ways of doing it. We've used both ways in other projects. You could pay for the gas delivery and management through



the monthly payment, the NRR. But because we didn't know what those costs were going to be, it was very likely that TransCanada would have said, "Well, we want the number to be X," including probably a risk premium, and they would have earned a rate of return if it was in the NRR. We said, "Given the uncertainty, what probably makes sense is to do it on a cost pass-through, so take it out." That mitigates the risk of the cost because it's basically saying it will be tied to regulated rates. We also set up a committee that would look at the services. That had to be a committee that had to reach consensus between TransCanada and the OPA to say, effectively, "No, you can't"—

**The Vice-Chair (Mr. Phil McNeely):** One minute.

**Mr. Colin Andersen:**—"the services." So we also felt that it was a good idea to mitigate the cost for the ratepayer by effectively taking them on on a cost pass-through basis, that that would be the way to keep them closest to their actual cost. This is the incremental amount over and above what they would have paid for Oakville that we were looking at.

**Mr. Peter Tabuns:** When we were first presented with all this information, obviously, we were first told that there was a \$40-million charge, and then there was the \$210 million for the turbines and that there's a reduction in the monthly payments, the NRR, that would cover all that.

**The Vice-Chair (Mr. Phil McNeely):** I'm sorry. Time is up. We'll have to wait for the next 10 minutes for that.

**Mr. Peter Tabuns:** I'll be back. Thanks.

**The Vice-Chair (Mr. Phil McNeely):** Mr. Delaney, of the government.

**Mr. Bob Delaney:** Thank you very much, Chair.

Mr. Andersen, it's good to see you again. Thanks for coming back to have a chat with us the second time.

We were chatting before the meeting began, and to just pick up on that, we both accept the Auditor General's opinion of the cost as expressed in her report.

Much like my colleagues, I want to talk to you today about some of the numbers and the analyses and the scenarios that were set out, both by you and by the auditor. Just to start off, the last time you came before the committee, you were asked by the minister to provide an updated cost estimate on the Oakville facility—

**Mr. Colin Andersen:** Yes.

**Mr. Bob Delaney:**—and the day that the auditor tabled her report, the OPA put out a statement saying that you stand by your estimate of \$310 million for the relocation cost of moving the plant from Oakville to Napanee. Just to confirm, that's the same estimate you provided to the committee more than six months ago, on April 30.

**Mr. Colin Andersen:** We stand behind our methodology, yes.

**Mr. Bob Delaney:** Splendid. Thank you.

In the release, the OPA attributes the difference between the Auditor General's estimate and the OPA's estimate to the fact that the OPA used, and I'll use your

language, "different rates to put future costs and savings in today's dollars and used different in-service dates for the plants." I'll get to the in-service in a minute, but I just want to focus on the discount rates. The OPA used a 6% discount rate, while the auditor used a 4% discount rate.

**Mr. Colin Andersen:** That's right, yes.

**Mr. Bob Delaney:** Could you explain the significance of the discount rate and what factors go into estimating both the rate and the end result when you've run the algorithm?

**Mr. Colin Andersen:** These are estimates or forecasts, essentially. As the auditor said, two thirds of the costs and 100% of the savings haven't happened yet—they're going to happen in the future—and we've made different assumptions about start dates, so we're looking at different time periods. Discount rates are largely used so that you can compare, on an apples-to-apples basis, streams of costs—and in this case, savings—that happen over a period of time. They're quite common to use when you're looking at infrastructure projects and the like.

The choice of discount rate can reflect a number of different things. Generally, it reflects the opportunity cost of what you would have done with the same amount of money, rather than the choice you were making. Generally, the choice of discount rate reflects your opinion on the risk of the project—the risk profile of it—or maybe the cost of financing it. The Auditor General chose a rate that's consistent with a 10-year government borrowing rate, which is a relatively risk-free interest rate.

On the other hand, we use 6%. It's a number we've used for planning purposes for quite a long period of time, and we think it's more appropriate because it reflects the type of projects we look at. They have a bit more of a risk element to them; they can be a mix of some public and private infrastructure.

Also, we basically benchmark our rates against others. Manitoba Hydro, I think, uses 5.5% and BC Hydro is 8%—I might have mixed those two numbers up—but there are a variety of different bodies out there that are using higher rates. The Ministry of Finance here in Ontario, I think, uses 5.5%. I think this has been a long-standing difference of opinion between Auditors General and the Ministry of Finance here in Ontario, for example. You could look at other Auditor General reports that debate this, and there are many academic papers on what is the appropriate discount rate to use. So we've gone with the one we think is the most appropriate, and it results in a difference of about \$90 million or so between our estimates.

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**Mr. Bob Delaney:** It's \$90 million spread out over 20 years?

**Mr. Colin Andersen:** Yes.

**Mr. Bob Delaney:** Okay. The OPA and the auditor also differ on their opinions for the estimated start dates of the Oakville plant—that would be the Oakville plant had it have gone forward—and on the future Napanee plant. The timings of those start dates are based on a number of different assumptions. Could you explain



some of the underlying assumptions, how that affects the start and end dates, and what impact that would have as you project that through to the total cost estimate?

**Mr. Colin Andersen:** Sure. This is the biggest area of difference between our estimates. All of the underlying costs that are associated with the project and some of the revenue streams and the like—we're generally in pretty close agreement with the auditor, but it comes down to the discount rate and the assumptions about the start dates.

Basically, what the auditor is saying is that because of local opposition and some of the actions of the town of Oakville—taking things through legal proceedings—she felt that the plant was going to be delayed at least two years. That is a bit of an assumption on her part. She couldn't specifically say that this is the date, because we're now talking about an event that's never going to happen. Neither one of us is going to be able to definitively say, "This is the date it would have opened." It's never going to open, so we're never going to be able to prove it.

TransCanada was also actively working their way through the legal process to do what they had to do to meet their contractual obligations. It's possible that they might have won their appeals and started to continue forward with the negotiation.

So we're talking about events that we're making assumptions on that haven't happened and are actually never going to happen, but it's quite key to the difference in opinion about what is a relocation savings.

When you look at it from the ratepayer perspective, the fact is the Oakville plant is not opening, and the ratepayer is not making any payments for any plant in 2015-16. The auditor, effectively, says, "Those savings would have happened anyways and they don't count as relocation." She doesn't dispute that those payments aren't being made, but she doesn't feel that they should be considered a relocation savings.

However, in our estimate, we do count those as savings, the \$310 million, for a couple of reasons. Given that we can never be certain about—pick a date in the future—when the plant might have opened—if we had gone through a legal proceeding, we would have started where we started, with the contract date; that's a known date. But also, from a ratepayer perspective, we think it's legitimate. They're not paying those amounts of money, and the plant is not going forward. Therefore, we think \$310 million, because it takes into consideration those two years of savings, is appropriate to include, and it traces back to assumptions about start dates. It also traces back to the fact that the plant is not opening and payments are not being made by the ratepayer. So when you look at it from a ratepayer perspective, they're not making those payments.

**Mr. Bob Delaney:** Are there any other factors involved in the difference between the OPA's final number and the auditor's final estimate?

**Mr. Colin Andersen:** First of all, I would say that these numbers aren't final. The auditor—she uses some

interesting words in her report. This wasn't an audit; this is a forecast. She actually cautions the reader that the numbers will change and that they're likely to be different than the actual. Some of this stuff we won't be able to verify for 20 years. Some of it will always hinge on what assumption you've made. So our \$310-million estimate will continue to evolve over time. There are some ups and downs in the numbers. There's some stuff that we would say hasn't changed materially or firmly enough yet that we would update our number, so we've stayed with the \$310 million, but there are some things that we've talked to the auditor about that we agree with—efficiency rates and the turbines and things like that—that she incorporated. There is some stuff that could transpire over time, as we're working through gas demand and management and the like, so the numbers are going to continue to evolve. I would say that we are largely with her estimates on all the underlying cost elements. It's really just those big ones on the discount rate and the start dates that speak to the difference.

**Mr. Bob Delaney:** In your experience, using the methodology that the OPA used to calculate your number for Oakville, have other projects come through at costs similar to the estimates you had made at the outset?

**Mr. Colin Andersen:** The Oakville plant was competitively tendered, so we got a good result for that, and then we negotiated, as much as possible, a like-for-like project to move it to Napanee. As the auditor points out, and as we have said, a lot of the increase in costs is actually attributable to the location choice, and so the underlying elements—you know, we do think it's good value for ratepayer money, and we do believe in a competitive process to get those plants.

We did have Deloitte look at the Napanee project and compare it to the Oakville one, and they said that the elements are generally consistent—the financial elements—and that they felt it was commercially reasonable as well. We had them look at it, and we had NERA look at it as well. So we had some third party experts have a look at them. It does fall in line consistently with other gas projects we have procured as well—large gas projects.

**Mr. Bob Delaney:** Did the auditor agree with the OPA on the total value of the sunk costs for Oakville?

**Mr. Colin Andersen:** The \$40 million?

**Mr. Bob Delaney:** Yes.

**Mr. Colin Andersen:** Yeah. That number has stayed. It's probably the most consistent number throughout the whole process.

**Mr. Bob Delaney:** Would that mean it's really the future estimated costs and savings on which you have an opinion different from the auditor's opinion, but not the costs that have already been incurred?

**Mr. Colin Andersen:** Well, the costs and savings, before they're discounted—we're largely in agreement. You know, our forecasts aren't that far off, but it's when you discount them.

We did have a difference of opinion, you know, about replacement power in the far out-years. We felt there



were some savings from that; they felt that was too far in the future to count. But we figured that if we're going out 20 or 25 years on some of the other pieces of it—the gas costs, for example—why wouldn't we also count replacement savings? You know, you're making a lot of judgments about what's going to happen in the future with the economy and with gas demand and prices and a variety of things, but that was one other area of difference.

**Mr. Bob Delaney:** So these are not simple, linear calculations with one, two or three variables; these are very complex calculations in which many of the variables, almost by definition, can and do change over the span of a generation.

**Mr. Colin Andersen:** Well, they can and do change, yes, regularly, so over time for sure.

**Mr. Bob Delaney:** The OPA put out a preliminary estimate a few months ago on the cost to relocate the Oakville plant, and if my memory is correct, this estimate ranged from \$33 million to \$133 million. Do you recall that?

**Mr. Colin Andersen:** Yes.

**Mr. Bob Delaney:** Who did the work to come up with that estimate?

**Mr. Colin Andersen:** Well, we did. I mean, it was the staff in our planning area and our procurement area and, you know, it was a very preliminary estimate. I would say it wasn't ready for public consumption—we would have done a lot more tire-kicking on it. It was based on information we had at the time and, you know, we were still thinking about methodology and some of those kinds of things. Again, it still goes back to where we're predicting costs that are in the future. You know, you can have a lot of discussion about what is the appropriate methodology to use and what kind of assumptions you should use. Those are very early estimates.

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**Mr. Bob Delaney:** Right, and it was done entirely by the OPA?

**Mr. Colin Andersen:** Well, we actually had discussions with the deputy's office. The minister and the chief of staff were in on some of the discussions. I don't remember which version ended up in the public domain, but there were discussions with the ministry about some of those elements. It was part of developing our thoughts on what was the appropriate methodology to use and what kind of assumptions, and did they agree with those? You know, I think it's good to get other opinions on those kinds of things.

I still go back to, you know, those were very preliminary estimates; they were for discussion purposes. That's what we were doing. That was the purpose of that document: to go and talk to the ministry and get feedback on what we were seeing.

**Mr. Bob Delaney:** Certainly, the wide variance in the estimates suggests it was in fact a discussion document. Earlier, you said something that has been said a number of times in the committee: that two thirds of the net costs and all the savings have yet to be incurred, and will be amortized over the next 20 years. In your assumptions,

do you assume this amortization to be linear, or is it front- or back-end loaded?

**Mr. Colin Andersen:** Well, I think what we actually try to do is say, "Okay, when do these costs actually materialize?" Some of them are up front. So, the sunk costs—the turbine cost and some of those things, for example—are paid for up front. Some of the others can vary; it can depend on what we think is likely going to be the demand and the use of the plant over time. I would say there are ones I've seen that are relatively smooth: There some savings and some costs up front, then there's sort of a long period in the middle where we largely agree with the auditor, and then there are differences at the back end. Those are attributable to the fact that we had these differences of opinion about in-service dates.

**Mr. Bob Delaney:** Just a couple of quick clarification points that you raised: The \$210 million that the OPA paid TransCanada for the turbines has already been paid off through the rate base, correct?

**Mr. Colin Andersen:** That's right, yes.

**Mr. Bob Delaney:** So, of the \$675 million referred to by the auditor, \$40 million of that is the sunk cost and another \$250 million has already been paid off. Would that be correct?

**Mr. Colin Andersen:** Well, \$40 million would have been paid off the tax base, and \$210 million would have been paid off the rate base. Basically, we're saying that things that produce electrons or are related to electrons come off the rate base; money that couldn't be repurposed would be paid by the taxpayer. That was the thinking with regard to the split for that project.

**Mr. Bob Delaney:** All right. In terms of the costs associated with relocating the Oakville plant, the government relied on the OPA's approach when it announced the original costing figures, correct?

*Interjections.*

**Mr. Colin Andersen:** Sorry, I can't hear you. There's—

**Mr. Bob Delaney:** In terms of the costs associated with the relocation of the Oakville plant, the government relied on the OPA's approach when it announced its original costing figures, correct?

**Mr. Colin Andersen:** Well, the government was at the table and Infrastructure Ontario was there. So, it wasn't just us who were involved in the calculations, but we would be the primary source of the figures, yes.

**Mr. Bob Delaney:** Just to quickly recap—

**The Vice-Chair (Mr. Phil McNeely):** One minute.

**Mr. Bob Delaney:** Okay. Just a quick recap, then: In the OPA's backgrounder from September 24, which states that the OPA is paying for the cost of the gas turbines as well as the gas management, it also says there would be significant savings from a lower net revenue requirement. That stood then; does that still stand now?

**Mr. Colin Andersen:** Yes. Sorry, I was just thinking one last thought about your previous question. We provide information to the government, but we can't always control how it ends up being subsequently used in the communications. So, saying they relied on our num-



bers—yes, we provide input, but it's another thing how it might actually get subsequently communicated.

Sorry. Your question again on the NRR: There were reductions in the NRR.

**Mr. Bob Delaney:** That's correct. That's what I just wanted to clarify.

Thanks, Chair. We'll end here.

**The Vice-Chair (Mr. Phil McNeely):** Time's up, anyway. Thank you very much. We'll go to Ms. Thompson of the official opposition.

**Ms. Lisa M. Thompson:** Thanks very much, Chair.

Colin, thank you for being here. Clearly, when you were speaking to my colleague from Nepean—Carleton, a large message that was coming out was that—and we all should know; simply economics would dictate that the fact is, the closer the source to the demand, the cheaper it would be overall. You mentioned that proximity to existing infrastructure as well is very important, and you considered that when developing your four top choices.

I'd like to segue over, then, to green energy, renewable energy. I was wondering if you could share your opinion on how the siting of existing industrial wind turbines is working out for this government. What crosses your mind at OPA, based on the fact that you've already noted that it's cheaper to produce power closer to demand and that infrastructure for distribution is very important? What crosses your mind in the OPA?

**Mr. Colin Andersen:** Siting is an important part of locating any kind of infrastructure, and it goes into our planning. We determine, based on available infrastructure and—

**Mr. Steven Del Duca:** Point of order.

**The Vice-Chair (Mr. Phil McNeely):** Point of order, Mr. Del Duca.

**Mr. Steven Del Duca:** Sorry for the interruption. I just wanted to—

**Interjection:** Stop the clock.

**Mr. Steven Del Duca:** You can stop the clock. I just wanted a clarification. I'm not entirely sure that this is within the scope of the committee's mandate. I wondered if I could get a clarification.

*Interjections.*

**Mr. Steven Del Duca:** I'm asking the Chair. If you don't mind, I'm going to ask the Chair.

*Interjection.*

**Mr. Steven Del Duca:** The clock has stopped.

**The Vice-Chair (Mr. Phil McNeely):** One person only—

*Interjection.*

**Mr. Steven Del Duca:** Are you filling both roles? Would you like to fill all the roles in the committee? Fill all the roles or just—

**The Vice-Chair (Mr. Phil McNeely):** Mr. Yakubski, wait until Mr. Del Duca gets finished with his point of order.

**Mr. Steven Del Duca:** Thank you, Mr. Chair. I just wanted a clarification as to whether this line of questioning is within our scope.

**Ms. Lisa M. Thompson:** It's about siting.

**The Vice-Chair (Mr. Phil McNeely):** I'll go to Ms. Thompson and just ask how you're tying this in with what is obviously the subject of this hearing.

*Interjection.*

**The Vice-Chair (Mr. Phil McNeely):** I'm asking Ms. Thompson.

**Ms. Lisa MacLeod:** If I could just—on a point of order.

**The Vice-Chair (Mr. Phil McNeely):** Point of order.

**Ms. Lisa MacLeod:** Earlier today, I had asked David Butters about the siting issue. I did say, at the time, that I would be raising it again. I didn't have the opportunity. I asked Ms. Thompson to raise the siting of the gas plants, as well as, when we had the OPA in front of us, how that also impacts siting of other types of power not exclusive to gas. That's very relevant in this case, because we're simply asking the head of the Ontario Power Authority, and I asked him previously, about the supply and how those decisions are made.

She is simply asking, I think, a very fair question regarding the siting of the supply of energy in the province and its infrastructure, regardless of what that power supply is, and how it maybe differentiates between what the supply is. I think it's a fair question.

**Mr. Steven Del Duca:** Chair, that may be a fair question for the Legislature itself, but that's not a fair question with respect to the scope of this mandate.

**Ms. Lisa M. Thompson:** But it's coming back—

**The Vice-Chair (Mr. Phil McNeely):** Just give me a minute here, and I'll respond to the two—

**Mr. Steven Del Duca:** Sure. Absolutely.

**The Vice-Chair (Mr. Phil McNeely):** I'll rule on that. This is dealing with the documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.

My decision would be that we're not going into the siting of wind turbines today. If you wish to ask the question regarding siting generally, then you can proceed.

**Ms. Lisa MacLeod:** Point of order, Chair.

**The Vice-Chair (Mr. Phil McNeely):** Point of order.

**Ms. Lisa MacLeod:** Were we or were we not provided and did not the deputant bring forward a chart called Engaging Local Communities in Ontario's Electricity Planning Continuum? Did he not reference that after he handed it out during his remarks?

I'm not finished. I just want a yes or no answer on this, then I'm going to continue to proceed.

1610

*Interjection.*

**Ms. Lisa MacLeod:** He did, and I have it in front of me. I'd like to point out that on that, it says, "What exists now

"Framework

"Policy context

"Municipal

"—Official plan



“—Zoning bylaws  
“Provincial”

The first bullet is, “Green Energy Act.”

He talks about “Regional electricity planning,” he talks about “Procurement and siting,” and he talks about “Supporting recommendations.” That’s one page. He points out that there’s two pages, Chair. He talks about “Municipal governments, First Nations and Métis communities and stakeholders.” He talks about “Linking local and provincial planning.” He talks about “Reinforcing the planning/siting continuum,” and he talks about “Enhancing electricity awareness and improving access to information.”

**The Vice-Chair (Mr. Phil McNeely):** Okay, I think we’ve had enough from you right now. I don’t think it’s relevant to this issue—

**Ms. Lisa MacLeod:** It is relevant to it. I can’t believe you’re going to try and shut us down—

**The Vice-Chair (Mr. Phil McNeely):** I’m going to rule on it.

**Ms. Lisa MacLeod:** Just because you’re a Liberal doesn’t mean you can shut us down—

**The Vice-Chair (Mr. Phil McNeely):** I’m going to rule on it, and you can take it to the Speaker.

Okay, Ms. Thompson, can you continue?

**Mr. John Yakabuski:** Point of order.

**The Vice-Chair (Mr. Phil McNeely):** Point of order.

**Mr. John Yakabuski:** I would like to have a five-minute recess.

**The Vice-Chair (Mr. Phil McNeely):** Any objection to a five-minute recess?

**Mr. Bob Delaney:** Only if we know the reason. Just tell me why.

**Mr. John Yakabuski:** I would like a five-minute recess. I don’t have to give you a reason. I’ve asked for a five-minute recess.

**The Vice-Chair (Mr. Phil McNeely):** We’ll have a five-minute recess.

*The committee recessed from 1611 to 1616.*

**The Vice-Chair (Mr. Phil McNeely):** We’re back in session. I’d just like to say that we have no control over what people bring into the meetings, but I made a ruling that the location of the turbines is outside of the terms of reference of this committee. So, Ms. Thompson, if you’d like to continue your questioning.

**Ms. Lisa M. Thompson:** Okay. Thank you very much, Chair. Mr. Andersen, have you ever been to my riding of Huron–Bruce?

**Mr. Colin Andersen:** Over time, probably, yes.

**Ms. Lisa M. Thompson:** Visiting cottages or taking a trip, things like that?

**Mr. Colin Andersen:** Driving through, yes.

**Ms. Lisa M. Thompson:** Tourism on the lakeshore is very important in my riding. I find it interesting—this is my first day on the committee, so I apologize, but I didn’t—clearly, the government doesn’t want to talk about the mess that green energy has made across Ontario, so we will divert to the criteria of siting because I think, in my perspective, Chair, the siting of gas plants,

the siting of turbines, the siting of solar and the siting of biomass should all be a consideration and tied back together.

My question for you, Mr. Andersen, is around the criteria that you referenced when you were speaking to my colleague with regard to choosing your top four sites for the gas plant. You mentioned that it was based on available criteria. I’m wondering if you can expand on the criteria that you used to pick your top four locations that weren’t selected by the government.

**Mr. Colin Andersen:** When we look at siting a gas plant, specifically we would look at the availability of gas pipelines in the area, to get the fuel source there. We would look at the availability of—are there existing transmission wires there? Is the local distribution system capable of accommodating the system?

When you look at that, you have to take into consideration what’s already there and what other proposed demands on the system might be forthcoming as well—what might also be planned. We plan the system as a whole, and that has to take into consideration all types of fuels and their characteristics and what they need out of the transmission system.

We would also take into consideration—are there existing facilities in the area that might be suitable locations, suitable sites, to add a site to? In this case, we were looking around for communities where there were existing OPG-owned sites, because the feeling was that those communities already had a familiarity with these types of generating plants and probably would be relatively accepting of them as well. So those are all things that go into the consideration of choosing a site.

Then, of course, it has to work for the particular configuration that we were talking about: the size of the plant that we were looking at relocating, because not all sites are suitable for a small or a large plant, something like that.

**Ms. Lisa M. Thompson:** Interesting. Okay. Just a point of clarification: When you mentioned that you have to take a look at what is already there, can you specifically say what you mean by that?

**Mr. Colin Andersen:** Yes. The types of facilities that exist and how they operate and the characteristics that they operate can have an impact on the availability of the system to essentially flow electrons. When we’re looking at the Napanee site, there’s an existing oil and gas facility there that we looked at to see, okay, if it’s operating, what kind of room is available on the system to flow electrons?

Every fuel type has different characteristics. Every generation facility has different characteristics. We have to take into consideration the provincial system, but then there are also local reliability issues. IESO, the system operator, has North American standards that it has to conform with, so you want to make sure that you’re staying consistent with the reliability of the system and you’re operating within the means of the system.

**Ms. Lisa M. Thompson:** With regard to transmission and distribution, you agree that there needs to be invest-



ment made to get the power from Napanee back to the GTA, correct?

**Mr. Colin Andersen:** We're looking at who's triggering what. When we were looking at what was available and what other potential uses there might be for the system—often our engineers and our planners take a relatively conservative approach and say, “We should reserve a certain amount of room there for flows from Quebec or the eastern Ontario situation.” We did feel that we could accommodate the Napanee plant within the existing infrastructure.

Now, what comes later remains to be seen. Again, we're talking about the future and what other needs there might be that might trigger changes. They're dependent on actions that haven't happened yet—what might happen with the Darlington facilities, the time scheduling of those, our feed-in tariff program and a variety of other things—you know, what might come. But we did feel that we could accommodate the Napanee plant because of the existing infrastructure that was already there, both on the pipeline side and on the transmission side.

**Ms. Lisa M. Thompson:** Do you have a cost analysis of what that accommodation on the existing transmission grid will be for the Napanee plant?

**Mr. Colin Andersen:** Specifically on whether or not there was going to be more transmission?

**Ms. Lisa M. Thompson:** Yes.

**Mr. Colin Andersen:** Some of the documents that we've already disclosed do a bit of a comparison of the different types of sites with regard to some of these kinds of considerations. Some of them have more of a cost estimate attributable to them than others. I don't remember if we have a specific number on transmission, but we would have had an analysis that would have said, “Here's how much it can or can't be accommodated in this area,” and what some considerations might be.

**Ms. Lisa M. Thompson:** Do you feel that this government has gotten the horse ahead of the cart? They're making all kinds of announcements right now before their long-term energy plan is even out. You made the comment that with regard to distribution and transmission on a go-forward basis, you really need to look at what future demands will be on that system—for example, the different kinds of fuels that may need that transmission. We just had an ad hoc announcement within the last 10 business days with regard to refurbishing nuclear, ahead of the announcement of the final report coming out of the long-term energy plan.

Going back to the gas plant, do you think that this government has gotten out of sync with where they need to be going with their overall view and vision for long-term energy?

**Mr. Colin Andersen:** Let's talk a bit about planning for electricity. It's a very vital necessity to our daily lives and our businesses, and we need to make sure that it's there when we need it. There are lead times associated with getting it in place. There are a lot of different ways of meeting those needs—

**The Vice-Chair (Mr. Phil McNeely):** One minute.

**Mr. Colin Andersen:** —sometimes it's generation, sometimes it's transmission, sometimes it's conservation—and those needs do change over time because the economy changes and demand changes. I think what's important is that you decide when you need to decide so that you can get the infrastructure in place in time to meet those needs, you're also able to respond to changing circumstances, and you have a certain amount of flexibility. So you need a good balance of both of those.

In this particular situation, of course, what we're trying to do is balance off a number of objectives, which are also to relocate a plant and mitigate the financial risk on the ratepayer in trying to do that. So we had lots of objectives in this particular one.

**Ms. Lisa M. Thompson:** Have the numerous directives given OPA a lot of grief with regard to trying to plan for some of those changes that have to take place?

**Mr. Colin Andersen:** Directives provide clarity; they give a very clear indication of what the—

**Ms. Lisa M. Thompson:** But changing directives?

**Mr. Colin Andersen:** —government intent is. Predictability and certainty are always good things. But as I was just saying, you also have to be able to respond to some changing circumstances. We don't have authority on our own to go out and procure, so it's good when there is a very clearly stated directive that we can act upon.

**The Vice-Chair (Mr. Phil McNeely):** Time is up. We'll go to Mr. Tabuns, of the New Democratic Party.

**Mr. Peter Tabuns:** Mr. Andersen, you commented that the report by the Auditor General on the Oakville power plant cancellation included many estimates. There was some review of existing costs and estimates of future costs. I assume that you would accept that costs could be higher than what the Auditor General has set out here.

**Mr. Colin Andersen:** Costs and savings both could be higher or lower because we're talking about the next 20 years. Any of them could be higher or lower—

**Mr. Peter Tabuns:** Higher or lower.

**Mr. Colin Andersen:** —or lower. I think it's equally important to say that some of them could be lower.

**Mr. Peter Tabuns:** You accept that they could be higher, and that's fine for me. I appreciate that.

The question of arbitration: The Auditor General said that the arbitration agreement that was put in place was favourable to TransCanada Enterprises. Would you agree with that?

**Mr. Colin Andersen:** It was a three-party arrangement. I think we still would have gone into an arbitration arguing hard, but there were certain things that were taken off the table as part of that framework.

**Mr. Peter Tabuns:** So would you agree with the Auditor General that it favoured TransCanada?

**Mr. Colin Andersen:** I wouldn't use those words myself because, like I said, we would have still gone into the arbitration arguing. We thought we had pretty strong arguments with what we were still able to arbitrate.

**Mr. Peter Tabuns:** It took away the section in the contract—I think section 14—that said that OPA wasn't



liable for profits. It didn't recognize the force majeure situation. It didn't recognize a number of things that your staff had identified in emails that we've had a chance to read. It took away a wide variety of your legal protections. You don't agree with the Auditor General that the arbitration structure favoured TransCanada?

**Mr. Colin Andersen:** It definitely took away some of those things that we otherwise would have wanted to rely upon in an arbitration, but when all is said and done, we were going to be arguing about a quantum. It was the net effect of this—not if there was an award but what the quantum would be. But I think we still would have made a pretty strong argument that that quantum could have been very small, on a net basis and reflecting some of the considerations through the discussions of the meeting and the commitments that have been made between the Premier's office and TransCanada. Then we followed that up with a letter. Once those are already in place, the arbitration framework, to some extent, is reflecting what's there and what has happened. It was a three-party arbitration framework: the government, ourselves and TransCanada. The government is legally involved in it at this point in time, so you want to move forward on that discussion.

**Mr. Peter Tabuns:** So the government was well aware that those legal protections and arguments that you had around not being responsible for future profits and the force majeure situation weren't recognized in the arbitration. It wasn't a secret to them.

**Mr. Colin Andersen:** No. They were negotiating, drafting—or their representative was—the framework itself. Then we would be consulted on it, and we would offer our opinions. We made them pretty clear. The arbitration framework didn't materialize immediately. We were continuing to make some of our arguments about whether some of those things should be in there or not.

1630

A good example is whether or not residual value should have been included in the arbitration framework. That was a sticking point for quite a long time. We said it shouldn't be; TransCanada said it should be. In the end, we resolved that we would each be able to make our own case to the arbitrator, but that's an example of how we were certainly pushing back on the framework where we could.

**Mr. Peter Tabuns:** So the framework and the elements of it were not a secret; they were approved by cabinet, were they not?

**Mr. Colin Andersen:** Yes, ultimately. I can tell you that we took approvals through our board. I'm not always entirely familiar with how the government gets its approvals on its side, so I think you would actually have to ask the government folks that question.

**Mr. Peter Tabuns:** But as far as you could tell, the government representatives dealing with this negotiation understood the content, the framework of that arbitration?

**Mr. Colin Andersen:** Yes. There were multiple people involved in the discussions. They're all moving

around, checking in with who they have to check in. I would say that they were also pretty clear about where our opinions were on the subject, and I would say that, to some extent, we might have been viewed as the ones who were causing this to take more time to come together than it otherwise would have.

**Mr. Peter Tabuns:** But you kept pushing for the legal protections that you knew were your right?

**Mr. Colin Andersen:** Yes, where we could. We also felt that it had to be somewhat reflective of commitments that had already been made—legal commitments, one way or another.

**Mr. Peter Tabuns:** In February 2010—and you provided us with a copy of this legal agreement or this legal opinion—Aird and Berlis was asked by you and gave you a nine-page memorandum on what it would take to cancel the contract with TransCanada. So this is four months after you've signed a contract with them. Why had it come apart within four months? Why within four months, having engaged such a large obligation, were you looking to get out of it?

**Mr. Colin Andersen:** Well, certainly, what's interesting about locating infrastructure is that communities dial in at different points in time, right? So we would love—and that's why we've recommended in here that we engage communities earlier in the planning process, but it can be hard to get people's attention at that point in time. So it's actually not uncommon, as you work your way through a process and individual sites become more clear, that local opposition becomes more crystallized or comes into force at that point in time.

So the way this process worked is we had done an RFQ, four sites were identified, and that meant that the people who were intimately familiar with those four sites—some people started to get engaged at that point who hadn't been before. Then, obviously, when the actual site out of the four was chosen, it meant that the community members who felt they were most impacted by that site got even more vocal. Some of the others maybe breathed a sigh of relief. So you have people dialing in and starting to get more active at different parts of the process. Likewise, you had the town of Oakville that was starting to get more and more active and looking at what mechanisms it could potentially use.

**Mr. Peter Tabuns:** And you know, a year before, in March 2009, they passed bylaws to stop the plant from being built. You had notice—

**Mr. Colin Andersen:** After we had commenced an RFP process, that's right.

**Mr. Peter Tabuns:** Right, and before you signed a contract?

**Mr. Colin Andersen:** That's right, but like I said, it can—we felt that having the infrastructure in that area was an important thing. It would contribute to the system and would contribute to local reliability. Once we've started a process, we do want to make sure—if we feel that there's a need for that infrastructure because it's so important, we feel that we do need to go ahead with it.

**Mr. Peter Tabuns:** I'll go back to September 2010 then. Your board was called on to make a billion-dollar



decision without any written instruction from the Premier or the minister. Everything was verbal. It strikes me as odd that a billion-dollar directive would not generate an email from the Premier or the minister, or a letter from the Premier or the minister, saying, "You know what? You've got to stop this."

**Mr. Colin Andersen:** So, at that point in time, again, the strong desire or the strong intent was to negotiate a relocated plant, and the strong thinking was, "Let's go with that and not go down the road of litigation and legislation," which could have resulted in large amounts of money for no electrons. You obviously couldn't predict the future and what the costs would be, but the feeling was that if it was a like-for-like kind of project, we'd essentially be in the same position that we're in now.

Multiple events have transpired since then to mean that it didn't end up as being—you know, it was a like-for-like project, but location-wise.

**Mr. Peter Tabuns:** And neither the minister nor the Premier ever talked to you personally—

**The Vice-Chair (Mr. Phil McNeely):** Time is up. We'll go to the Liberals and Mr. Delaney.

**Mr. Bob Delaney:** Mr. Andersen, the home stretch.

During the course of the afternoon, we've talked about the different possible locations for the plant that ended up in Napanee. You had been discussing or negotiating for a location in the Kitchener-Waterloo-Cambridge area, correct?

**Mr. Colin Andersen:** At one point time we had been, yes.

**Mr. Bob Delaney:** Were you able to reach an agreement?

**Mr. Colin Andersen:** No, we weren't, because ultimately we were very far apart on what we thought would be the right price and what TransCanada thought would be the right price. I had said earlier that the Oakville plant was a 900-megawatt facility, and what our planners felt was about the right size was—I can't remember if it was a 300- or a 450-megawatt plant in the area, so a substantially smaller plant and a different type. TransCanada was looking to get the equivalent value from their first project; they wanted to get that out of the second project. We had strong differences of opinion about what that actual financial value would be, and hence the long negotiations over a period of time.

**Mr. Bob Delaney:** So at the time you had to make the decision, the Kitchener-Waterloo-Cambridge location had to be off the table.

Deputy Imbrogno came to see us for a second time just about a week ago and talked about some of the other sites as well. To use his words, each of those sites—and they had their pros and cons. "At Nanticoke, there would be additional costs related to building the gas pipeline." Lambton required "potential transmission upgrades of \$500 million" for a 900-megawatt plant. "Wesleyville didn't really have an existing facility on it. There were transmission issues, and we weren't sure if there'd be a willing host." However, "Lennox"—which is the

Napanee site—"has access to gas, access to transmission," and "It was a willing host." Would this kind of encapsulate the situation?

**Mr. Colin Andersen:** Yes, I would agree with all of those assessments. There weren't going to be any triggers for any major construction of a pipeline or transmission, and in the ministry's assessment, it looked like the Napanee area was going to be a willing host. That was an important consideration.

**Mr. Bob Delaney:** Did the OPA provide this analysis to the ministry?

**Mr. Colin Andersen:** Well, we provided analysis with regard to the availability on the transmission front and on the pipeline, the gas availability. I don't know how much we would have gotten involved in saying that it was a willing host community, aside from the fact that we would have said that, obviously, there was an existing facility already there. It would have been more up to the government to make that assessment as to who is a willing host or not.

**Mr. Bob Delaney:** In our last few minutes, I'd just like to engage you a little bit on some siting recommendations. From the experiences in Oakville and Mississauga, there were some serious flaws in the siting process for energy infrastructure, not least of which is that the cities discovered that land that they had zoned for precisely that purpose years before—they hadn't revisited their town plan for Oakville or city plan for Mississauga in light of current circumstances.

Minister Chiarelli announced that the government is implementing the 18 recommendations of a recent IESO and OPA report on best practices for energy sites moving forward, with the intent that the changes will improve municipal engagements and public consultation, and ensure greater predictability for the energy sector. So moving forward, there's going to be greater local voice and increased local responsibility for the siting of large energy projects, and regional energy plans would then be coordinated with municipal planning so that these projects would go to willing host communities.

1640

Could you talk about how the OPA and the IESO came up with these recommendations?

**Mr. Colin Andersen:** Yes, absolutely. I mean, this is something at the OPA that we've long advocated with regard to a better integration of land use planning on the municipal side and the electricity planning. We've had a number of regional plans in the works and some of them have been quite successful in working with communities to identify needed infrastructure upgrades. Kitchener-Waterloo-Cambridge-Guelph is an area where we've had lots of successes. We look at conservation and transmission and distribution and generation in their entirety.

The recommendations that we've made have said, "We need to get communities involved earlier and more often." Most of the time, we've relied on the LDCs to bring that local connection, but as we heard in our consultation process, or engagement process, the municipal

voice and the LDC voice are not always exactly the same. It's better to get some local community champions.

What we're looking at is enshrining on the planning side some of the requirements through the provincial policy statement so that official plans take into more explicit consideration the siting of electricity. It's just as important a form of infrastructure as water pipes and roads and subway systems and the like, so we think it should be enshrined as a requirement. We've tried to get the people cross-fertilized, if you will, so that some of the city planners will be involved in electricity planning and vice versa.

We think that providing more information is also an important part of this, so that the local communities have a better sense of what the needs are now and what's coming down the road. Ideally, I'd like to be in a position where at some point you see "future site of transformer station," or a generation facility naturally emerges from the planning process and a site that everybody is happy with, because it contributes to local jobs or helping to clean up the air in the area or it helps deal with landfill issues. When you get that better integration, you're much better able to have that certainty.

You know, people change their mind; towns change their mind. They change their zoning. We have to rely on what's in place when we start a process, and that includes zoning. We think that our proponent should be able to rely on that and not have the ground changed under their feet partway through. But part of getting that certainty is making sure that you've got the local community involved. It's a very labour-intensive process. Like I said, you've got people who get engaged at different parts of it, but by having people involved more on the upstream side in the planning, hopefully, you should result in a much better outcome on the siting—on the downstream part of it.

It's all part of one continuum, and we look forward to working with all the various ministries, because it's environment, municipal affairs and energy inputting these recommendations into place. We've already put a lot of them into place, and we look forward to doing the work to get the rest of them up and running.

**Mr. Bob Delaney:** Okay. Certainly, the two key things that went seriously wrong in both Mississauga and Oakville had to do with the fact that both municipalities had zoned that land for that particular purpose—industrial/power production—and the land had been legally acquired by the promoters. In 2005, Mississauga sent Eastern Power a letter saying, "You're good to go" to build a power plant on that site.

What's the status quo right now? For example, when it comes to planning for schools, for waste removal or whatnot, where does electricity planning fit in that spectrum for municipalities today?

**Mr. Colin Andersen:** There are some requirements through the provincial policy statement to look at electricity, but it's not as explicit as we think it should be.

**The Vice-Chair (Mr. Phil McNeely):** One minute.

**Mr. Colin Andersen:** If you look at the appendix to our report, you'll see that we've actually made some suggestions for changes to the provincial policy statement that would make that more detailed with the requirements to look at locating infrastructure.

There are some communities that are quite progressive and that already work with us on identifying corridors. There are some communities that have their own community energy plans that actually actively look at the types of electricity generation they'd like in their municipality, and both we and the province are providing some money to communities. We're providing to aboriginal communities to do more of that planning-type work. Our goal is to have every community do some kind of a community energy plan at some point because we think it's an important part of their growth aspirations and the sustainability of their communities. Everybody should be doing some form of it and working with us, because we're happy to work with them.

**Mr. Bob Delaney:** I thank you very much for your time.

**The Vice-Chair (Mr. Phil McNeely):** That uses up all our time. Thank you very much, Mr. Andersen. Thanks to the committee members. This meeting is now adjourned.

*The committee adjourned at 1646.*





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# Official Report of Debates (Hansard)

Tuesday 5 November 2013

# Journal des débats (Hansard)

Mardi 5 novembre 2013

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 5 November 2013

Mardi 5 novembre 2013

*The committee met at 0834 in committee room 2.*MEMBERS' PRIVILEGES  
ASSOCIATION OF MAJOR POWER  
CONSUMERS IN ONTARIO

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Ladies and gentlemen, colleagues, I call the meeting to order. I invite our first presenter to please come forward, Mr. Adam White, president of the Association of Major Power Consumers in Ontario, who will be sworn in by our wholly able Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Mr. Adam White:** I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. White. Your five minutes for opening remarks begin now.

**Mr. Adam White:** Thank you very much, Mr. Chair. It's my pleasure to be here today and to accept the invitation of the committee.

By way of opening remarks, I thought I would just introduce the Association of Major Power Consumers in Ontario to you, briefly. We are a not-for-profit organization. We represent the interests of Ontario's industrial power consumers. We have 43 members, which together represent about 10% of energy demand in the province and spend about \$1.5 billion a year on electricity. We represent Ontario's leading companies in mining, pulp and paper, iron and steel, petrochemicals, cement and automotive. We like to say that we're not just major power consumers; we're major investors, we're major employers, and we play a major role in the communities in which we operate.

Those are my opening remarks.

**The Chair (Mr. Shafiq Qaadri):** Thank you. We'll begin with the Conservative side for questions.

**Mr. Bob Delaney:** I think it may be me.

**The Chair (Mr. Shafiq Qaadri):** Thank you. To the government side, Mr. Delaney.

**Mr. Bob Delaney:** But you're welcome to, if you want to.

**Ms. Lisa MacLeod:** We'll have some questions.

**Mr. Bob Delaney:** All right. Mr. White, thanks very much for being here today. As I'm sure you've been briefed, part of the mandate of this committee is going to be to provide recommendations to the province on how we can improve siting for large-scale energy projects going forward, in the future. We've asked you here as a government witness because you've had a long career working in the energy sector and extensive experience with government and regulatory bodies on behalf of the largest power consumers in Ontario, both in your current role and in the past as president of the Ontario Energy Association.

Just before I start in with my questions, could you perhaps expand a little bit on your career in the energy sector?

**Mr. Adam White:** Well, I've actually been following the electricity file in Ontario since 1990. When I first graduated from university, I worked here in Toronto for the Energy Probe Research Foundation and we put forward some testimony at the Ontario Energy Board in response to a rate application of Ontario Hydro. That would have been the summer of 1990.

Since then, I've had a lot of different jobs. I've worked in government at the Ministry of Environment and Energy and the Ministry of Energy, Science and Technology. I've worked for TransAlta during the development of TransAlta's investment in Sarnia, the Sarnia regional co-generation project. I worked briefly, in 2002, as a power marketer with an American company called Mirant. Then I was the vice-president of public affairs and external relations with the Ontario Energy Association for a number of years and had the opportunity to serve as the acting president of the OEA for a short time. And for the last eight years, I've been the president of the Association of Major Power Consumers in Ontario.

**Mr. Bob Delaney:** As the president of the Association of Major Power Consumers in Ontario, you work to promote the development of an electricity system that's reliable and affordable. As such, you would have knowledge, I assume, of provincial energy issues in Ontario.

**Mr. Adam White:** We do try to follow what's going on. We are a lean organization. Our mission is simple: It's to do what we can to advocate for lower delivered energy costs for industry. We seek electricity costs that are competitive here so that we can attract investment and jobs into the province.

**Mr. Bob Delaney:** How does Ontario's current energy system compare to what we had at, say, the turn of the millennium?

**Mr. Adam White:** Do you mean in 2000?

**Mr. Bob Delaney:** Yes.

**Mr. Adam White:** It has been said that the electricity grid in North America is the most complex system ever devised by man. It is a complex system. Ontario is interconnected with its neighbours, as you will all know, and Ontario has a diverse supply of generation and a very robust high-voltage transmission grid. There has been significant investment in the sector since 2000, as you say. There is a saying: May we be blessed to live in challenging times. There is no end of interesting things to explore in this sector.

**Mr. Bob Delaney:** If you're a major power consumer in Ontario today, are we better off now than we were 10 years ago?

0840

**Mr. Adam White:** I think that's a subjective assessment and it depends on one's priorities. Our concern is that the costs of electricity have risen over the last decade. If Ontario benchmarks high relative to jurisdictions with whom we compete and if our forecast is for escalation in electricity rates, that is of concern to major power consumers.

**Mr. Bob Delaney:** If the price is a function of the variables of supply and demand, in planning over the long term for electricity demand, are there benefits to having a surplus of supply?

**Mr. Adam White:** The rules around electricity system investment, the North American rules around reliability, require that all control areas—Ontario being a control area—are able to meet peak demand during the peak times, as well as provide a contingency or operating reserve amount. Because of its very nature, the fact that it is generated and consumed in real time and isn't stored except for minor exceptions, it is intrinsic to the electricity sector to want to have some surplus of supply. The question really is how much. We have said recently that the most expensive generation is the generation that we do not need. Our concern is that there is an appropriate amount of contingency to have in the system, but beyond that, the costs really are and can be a burden to consumers.

**Mr. Bob Delaney:** You used a term that perhaps it would be helpful to define. You used the term "control areas" in North America. Could you just expand on the meaning of that term?

**Mr. Adam White:** I'm not a physicist or a power systems engineer, but the way that the electricity system is organized in North America is subject to regulation and there are overriding regulatory authorities in Canada and the United States. There is something called the North American Electric Reliability Corp., which sets standards for the reliable operation of the interconnected grid.

In Ontario, we have a system operator here that operates the grid within Ontario and directs the operations of

the grid in Ontario, and the IESO interacts with other system operators. So "control area" is a term that refers to—for example, there is a system operator in New York that operates the New York power system, and New York would therefore qualify as a control area, and Ontario would be a control area and so on.

**Mr. Bob Delaney:** Okay. So when you use the term, you use the term mainly to apply to control on a regional level.

**Mr. Adam White:** That's right.

**Mr. Bob Delaney:** You talked earlier about an electricity supply. Accepting what you said, that electricity is both generated and consumed in real time—in other words, the electrons are consumed in the same instant that they're generated—and allowing for fluctuations in demand at peak times and the fact that generating plants are either offline because of an event or offline for plant maintenance, have you any thoughts about, system-wide, what level of slack is needed in the system to provide the optimum in reliability?

**Mr. Adam White:** There's a lot in that question. First, it really relates to what is the optimal level of reliability. Not all customers require the same level of reliability. At home, for example, we can easily tolerate having some power outages in a year. The only inconvenience is to reset the clock on the microwave. But in some industries, especially those where electricity is part of critical environmental health and safety systems, such as underground mining, power outages really are much more risky. So the question, really, is what level of reliability for which customers and how that best is provided.

Most of the outages, actually, are related to issues that occur on the grid, not issues that relate to generation, so planning for reliability on the generation side, typically, is to provide enough generation capacity to reliably meet peak demand plus operating reserve, and providing for the single largest contingency on the grid, which would be the loss of a large generating unit.

**Mr. Bob Delaney:** You might be aware that the Ministry of Energy was recently consulting with Ontarians to discuss the future of our long-term energy plan. The last time I checked, the ministry had received more than 2,000 responses. Did you participate in any of the consultations?

**Mr. Adam White:** Yes. We consult with government on an ongoing basis. We have been, over the last number of months, looking into issues around long-term energy planning in Ontario and consulting with our members, as well as with people in government, about what our analysis finds with respect to long-term energy planning in Ontario.

**Mr. Bob Delaney:** What type of input or feedback have you offered to the Ministry of Energy in terms of the makeup of our energy supply?

**Mr. Adam White:** As I said, the challenging issue for the association is to make sure that we're accurately reflecting the views of our members. We typically do not meet over the summer months. We did meet in September, we did meet in late October, and we are planning to



meet again in November. We've shared our analysis with our members, and we are in the final strokes, I hope, of preparing the brief for our membership.

Our submissions to government really are focused on policies that will allow industrial customers to achieve competitive rates so that we can attract investment and jobs. There are two ways to reduce cost of power to customers: One is to reduce the cost of the system overall, and the other is to put policies in place that allow customers to reduce their own costs by more efficient demand management. We advocate along those lines.

**Mr. Bob Delaney:** What recommendations do you have with regard to diversity in the supply mix and its impact on the system?

**Mr. Adam White:** We haven't made any specific recommendations about diversity of supply mix. I think it's common sense that diversity in a portfolio is a way to mitigate risk. I like to think that we take a practical approach. The generation supply mix is what it is. The generation supply mix we have is the legacy of decisions that have been made in the past. We want to be sure, of course, that the system can operate effectively, and we are assured that the system can operate effectively. I don't think there's any magic to how much of the supply side should be met by any one generation source. The question is, with the sources we have together, can they be managed in a way which is effective to meet the overall purposes of the system, and we believe that they are.

**Mr. Bob Delaney:** Have you followed the levels of investment in power generation and transmission in Ontario's electricity system over, say, the last decade?

**Mr. Adam White:** Yes, we have.

**Mr. Bob Delaney:** What do you think of the level of investment by the province in electricity generation and transmission during that time?

**Mr. Adam White:** Well, the province has made significant investments in generation: for natural gas plants to support the phase-out of generation using coal, to refurbish nuclear reactors, and to increase the amount of renewable energy in Ontario. All of those investments have been significant, and there have been significant investments as well on the transmission system and by distributors on distribution systems as well.

**Mr. Bob Delaney:** One of the things being considered by this committee in particular is the cancellation of the two gas-fired peak power generation plants in Mississauga and Oakville. Were you aware of those two cancellations?

**Mr. Adam White:** Yes.

**Mr. Bob Delaney:** Okay. Have you followed the work of this committee at all?

**Mr. Adam White:** Not very closely, I must say. I do read the newspapers in the morning, and so that's been my primary source of information.

**Mr. Bob Delaney:** Are you at all familiar with the siting process that's used by the Ontario Power Authority?

**Mr. Adam White:** I would say perhaps superficially. I do have personal experience working for a large generation company involved in siting and permitting a facility, as I said, in Sarnia, so I do have some knowledge of the process from that perspective. We haven't followed very closely the work that the OPA does in terms of planning for and siting new generation. Our concerns are those of our existing industrial customers and the cost of power delivered to them.

0850

**Mr. Bob Delaney:** Have you seen any indicators from the province that suggest that the agencies responsible are looking to improve the siting of generation infrastructure?

**Mr. Adam White:** Well, we have said that we support the government's recent efforts to move in the direction of more regional planning, with more local involvement. We support that. It is a complex system and it operates on multiple levels. There is the high-voltage grid which serves the province overall, and then there are local areas served by local distribution companies and transmission assets and generation. We think that it is appropriate that these local needs be considered on a local and regional basis.

**Mr. Bob Delaney:** Have you had an opportunity to provide your input through any or all of the Ontario Power Authority, the Independent Electricity System Operator or the Ministry of Energy?

**Mr. Adam White:** Yes. I mean, my job, really, is to represent our members' interests with the government and public sector agencies, so that is where I spend a lot of my time.

**Mr. Bob Delaney:** Anything you want to expand on in that?

**Mr. Adam White:** Well, I am a member of the IESO stakeholder advisory committee, which meets a number of times every year to advise the board of directors and senior management of the IESO on the development of market rules and the evolution of the market. I'm a member of the Ontario Power Authority's advisory committee on conservation. The work of that body is to advise the OPA board and senior management on policies to promote conservation and more efficient demand management.

**Mr. Bob Delaney:** Have you been involved in any information sessions or other things that might be helpful for this committee?

**Mr. Adam White:** Over the summer, the Ministry of Energy sponsored a number of stakeholder sessions and public meetings. I did attend one of the public meetings in Toronto.

**Mr. Bob Delaney:** What role do you think public consultations could play in the siting of energy infrastructure?

**Mr. Adam White:** My personal view is that it's essential, and I think the matters that are before the committee help to support that point. We live in a society in which people expect to be involved in decisions which affect their lives and their communities. That expectation



is basic and I think it's powerful. The perils of improper or inadequate consultation, I think, are obvious to most proponents.

**Mr. Bob Delaney:** How could the various parties involved in public consultations—the regulators, industry, major consumers and the general public—maximize the process of public consultations and the siting of energy projects?

**Mr. Adam White:** I'm not an expert on planning and siting. Most of my views on this are from personal experience or instinct. My personal view is, given that Canadians and Ontarians expect to be consulted, they expect to be involved, they expect their views to be considered, that, as a proponent or as an agency considering an investment in infrastructure, there really is no alternative to early and often consultations with local communities. I don't think there is a single right way to do it. I don't think there is a formula to maximize it, as you put it. It will depend on the community. You know, we have willing host communities and unwilling host communities. People's views on issues can change. It has to do with how comfortable they feel with what's being proposed and how they feel it will affect their lives and their communities. I think it's important to recognize that expectation and to work with people in local communities to make sure that their issues are heard and addressed.

**Mr. Bob Delaney:** How best could industry and the various agencies of government most effectively engage municipalities on siting decisions?

**Mr. Adam White:** Well, I've talked a little bit with folks at the Ministry of Energy about this. I think, as I said, we support the government's recent efforts to promote more local involvement in siting decisions. I think that there are opportunities as well to improve local accountability for decision-making. I think it's important that municipal planning processes take into account the need for electricity infrastructure to support those plans. I understand that the government's efforts are moving in that direction.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** Okay. Anything else you want to expand on in that last answer? Talk about your understanding of what the government is doing to move in that direction.

**Mr. Adam White:** I don't have specific knowledge of the details of the government's plan. I understand that the OPA and the IESO worked together over the summer to prepare a number of recommendations and that those have been accepted by the government. As I said, I don't have detailed knowledge of that, but I think that it's important and it's movement in the right direction to encourage more local involvement.

Beyond involvement, I think it's important that local people feel that they are empowered in these consultations, that they are not simply being told what is happening but have an opportunity to affect the outcome. That is certainly our calculus on advocacy. We generally choose not to advocate on issues where we think we'll

have no ability to influence the outcome, and I think the same is true of local people. It's important that there be clear processes and expectations of people involved in these processes, and that their concerns will be addressed—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

I'll pass it to the PC side. Mr. Yakabuski, the floor is yours.

**Mr. John Yakabuski:** Thank you very much, Chair. Adam, thank you very much for joining us this morning. It's always good to see you. I appreciate the work that you do in this industry and your association and the contributions they make.

I'm just going to pick up a little bit where Mr. Delaney left off. I'm not going to put words in your mouth, but I am going to make a little bit of a statement. If the government was to actually do what they say they're doing with communities with regard to consulting them and allowing for more input with regard to the placement of energy projects, then it would be a positive development, but unfortunately, that doesn't appear to be the case. If you talk to communities that are under siege by plans for the government to erect massive wind farms, you will get a different answer from those communities. We have at least 74 in the province today that have passed resolutions defining themselves as unwilling hosts.

When you look at the numbers, they're still planning at least 5,000 more megawatts of wind. I think a reasonable question is, where are the willing hosts left to accept these kinds of developments into their communities?

One of the biggest concerns, I know in my time as energy critic—and we had many, many conversations over those years. The concern for your people, the number one concern, is the cost. They're major power consumers. Power, electricity, is a significant portion of their operating overhead.

Just for the purpose of understanding here, Adam, where does your association membership come into play? Who qualifies to be a member of AMPCO?

**Mr. Adam White:** Our eligibility requirements are set out in the by-laws of the corporation. Membership is—

**Mr. John Yakabuski:** Is there a power usage threshold? That's the one I'm getting at.

**Mr. Adam White:** Yes. Membership is open to companies that are engaged in industrial activity in Ontario with an average monthly demand over one megawatt.

**Mr. John Yakabuski:** An average monthly demand over one megawatt?

**Mr. Adam White:** That's right.

**Mr. John Yakabuski:** To simplify that, most people involved in heavy industry, even medium industry—forestry, mining, manufacturing—those would be where your membership would come from.

**Mr. Adam White:** That's right.

**Mr. John Yakabuski:** Some of those—for example, in forestry, probably 30% of the cost of doing business



would be electricity. Would that be somewhere around the number?

**Mr. Adam White:** I don't have the detailed knowledge of what the composition is. I know my members—it depends on the industry and it depends on the industrial process. I know in pulp and paper and ground wood operations it's a significant cost. I know that in iron and steel, electricity is a significant cost as well. It depends on what industry and what process.

**Mr. John Yakabuski:** Right. What is the view of your membership, with respect to the effect on the cost of electricity, of the government's Green Energy Act and the—

**Mr. Bob Delaney:** Chair, on a point of order.

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, a point of order.

**Mr. Bob Delaney:** I am looking very carefully at the mandate of the committee and the Green Energy Act isn't in it.

0900

**Mr. John Yakabuski:** Chair—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. The point is well taken. I would invite you to confine your remarks to the mandate, although I do appreciate that it is a generalized energy question.

**Mr. John Yakabuski:** It is a generalized energy question, Chair, and we gave the government side an awful lot of latitude, which we could have been injecting with points of order on almost every question that Mr. Delaney did about the history of Ontario and some of the silliness of the Liberal policies. We tried to be respectful. If they choose not to, that's fine, but we're going to continue with the questions that we have to ask Mr. White. If Mr. Delaney wants to act like a child and inject points of order, I welcome him to do so.

**Mr. Bob Delaney:** Chair, you may not impute motive on behalf of a member any more here than in—

**The Chair (Mr. Shafiq Qaadri):** Thank you. I'd invite us all to observe parliamentary decorum.

The floor is yours, Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Mr. Chair.

If I could ask you again: the view of the members of your association, particularly those people to whom the cost of power is of paramount concern to them being able to remain in business. What are their views on the cost of energy as driven up by the policies in the Green Energy Act?

**Mr. Bob Delaney:** Chair, on another point of order: The Green Energy Act is not being considered in this committee.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Mr. Yakabuski, thank you, and please continue. And I once again invite you to confine your remarks to the mandate of the committee.

**Mr. John Yakabuski:** The energy policies of the government that have driven up the price of power, which Mr. Delaney talked about quite a bit—you talked about the price of power in one of your responses to one of his

questions, saying that one thing is certain: the price of power is way up. How do the members of your association view the policy decisions of this government? The relocation of, for example, the Oakville plant is one of those policy decisions, one that has added \$513 million by itself. The cost of moving the plant to Napanee is a \$513-million touch because of the gas transportation costs, the energy transportation costs returning etc. It's a \$513-million bill. What is the view of your membership with respect to those kinds of government policies, including the generation decisions of this government and how they affect their ability to manage their businesses?

**Mr. Adam White:** Well, as I said, I wouldn't say that electricity costs are my members' first priority, but it is the association's first priority. I haven't canvassed my members specifically on their views or opinions related to policies of the government of Ontario. We take an agnostic view to generation technology and fuel type. There is a wide range of generation technologies and fuel types that could be used, hypothetically, in Ontario to meet demand. Ontario isn't blessed with the natural endowment of other provinces, such as Manitoba, Quebec or British Columbia. We just don't have the topography and hydrogeology to support the kinds of electricity system outcomes that they are able to. We are in a situation of making difficult choices.

I do advise my membership that there are positive attributes of renewable energy. With wind power, for example, the fuel is free. The marginal cost of energy, once the generation is in place, is virtually zero, and we like that cost. The question is how the fixed costs are to be allocated.

We understand as well that this is a complex system and the decisions around it are complex. Electricity supply decisions are made for a variety of reasons, including social and environmental reasons, and we accept that. These are choices that Ontarians can make. I think that there are political decisions and there are policy decisions in some cases, and this might be the case with the cancelled gas plants. There are also the decisions of local communities.

**Mr. John Yakabuski:** Well, they weren't the decisions of local communities. I think they may have had the opposition of local communities, but the decisions to cancel them were the government's, and the government's alone. They have the power and the authority to make such decisions. But that is a \$1.1-billion bill, if you look at Oakville and Mississauga in total. That will be passed on to your members, correct?

**Mr. Adam White:** Well, there's only one customer at the end of the day.

**Mr. John Yakabuski:** That's right.

**Mr. Adam White:** Yes.

**Mr. John Yakabuski:** So are you suggesting they're agnostic about that bill or they have no opinion on that bill, or do they have an opinion on that bill that they're going to receive as a result of this?

**Mr. Adam White:** Well, I haven't canvassed the AMPCO membership specifically on their reaction to the



matter of the gas plants. We do talk about what the total cost of power is and what comprises that cost. There are policy choices across the spectrum of generation technologies and fuel types, as well as on the grid side, that affect future costs. I would say we are business people and we support business decisions. If there was a case for investment, even if it drives costs up, if the business case is made, then we will support it. It's not just about lowest cost at any price; it's about what is the business case for generation. Given that the gas plants were cancelled and the decision was taken to relocate them, then there are costs that naturally flow from that.

**Mr. John Yakabuski:** Would you have supported this business case, to relocate the gas plant to Napanee?

**Mr. Adam White:** Well, I haven't seen a business case for it, so—

**Mr. John Yakabuski:** You haven't read the auditor's report on the relocation cost of either Oakville or Mississauga?

**Mr. Adam White:** No, I haven't.

**Mr. John Yakabuski:** Okay. Thank you very much. I'm going to pass the questioning over to Ms. Thompson. Thank you.

**The Chair (Mr. Shafiq Qaadri):** Ms. Thompson.

**Ms. Lisa M. Thompson:** Thank you very much, Chair.

I'm interested in some of the work your association may have done. You said earlier that your membership represents companies with an average monthly usage of over one megawatt, and I would imagine an association looking at the ever-increasing cost of energy would be doing their own analysis as to, if energy goes up the projected 50% over the current price—well, 150%. Have you done an analysis over the scale, that as energy prices go up, a number of jobs, a number of companies leave Ontario. Have you done research and an analysis in that regard?

**Mr. Adam White:** No, not specifically.

**Ms. Lisa M. Thompson:** Not specifically? Then, can you touch on the work that you have done to date?

**Mr. Adam White:** I think the most recent sort of macroeconomic analysis we've done was a number of years ago. Broadly speaking, one is likely to find correlations between input costs and investment and jobs, and electricity is one of those inputs. It's not the only input.

I think as well, it's fair to say that Ontario has seen a transformation in the nature of the economy and this is a long-standing phenomenon. It's not new that Ontario has replaced jobs in heavy industry with jobs in knowledge-based industries. I don't think that's a new phenomenon. We are concerned that there are key industries in Ontario which we should seek to retain, and to do that, we need to find ways to deliver them their inputs at a competitive price.

**Ms. Lisa M. Thompson:** What industries would those be?

**Mr. Adam White:** Well, the industries that we represent: pulp and paper, mining, iron and steel, petro-

chemicals and automotive. Those are key industries. They are the backbone of Ontario's economy.

**Ms. Lisa M. Thompson:** What kind of timeline do you feel is associated with retaining those industries? When will it be too late?

**Mr. Adam White:** Well, I've been in the file a long time, and people will be debating these issues long after I'm gone, I am sure. I have a strong sense of urgency that anything we can do now, we should do now, and the plans we make for the future should look at ways we can reduce the delivered cost of power for industry.

**Ms. Lisa M. Thompson:** Do you think the government's listening to that?

**Mr. Adam White:** I do. I think governments of all stripes are attentive to the issues facing major industries. How to attract investment and how to create jobs in Ontario—I think those are important issues. I do think that the government has been receptive to our advocacy in the last number of months.

**Ms. Lisa M. Thompson:** Interesting. I want to talk about your concept of willing versus unwilling communities as well. It's a file that I've spent a lot of time on. You talk of the most recent decisions to listen more to communities. Well, for goodness' sake, with the amount of application and the amount of approvals that are happening right now on the renewable side, let's be real: The government has realized their target number. So the idea of listening—

**Mr. Bob Delaney:** Chair, again, on a point of order—

**Ms. Lisa M. Thompson:** —be it gas plants or any other—

**Mr. Bob Delaney:** We are here, according to our mandate, to talk about the cancellation and relocation of the Mississauga and Oakville gas plants. There is a time and a place to consider any aspects of the Green Energy Act, but this is not that time or place.

0910

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney.

**Ms. Lisa M. Thompson:** You were speaking about willing and unwilling communities. Give me a break.

**The Chair (Mr. Shafiq Qaadri):** I would simply ask that the remarks be confined to the agenda, but once again, we are talking about energy policy, and if you can relate this to the committee's mandate, Ms. Thompson—

**Ms. Lisa M. Thompson:** That's where I'm going.

**The Chair (Mr. Shafiq Qaadri):** —then I would allow the question.

**Ms. Lisa M. Thompson:** So with that, we've realized some target numbers, and looking at gas plants, willing versus unwilling, don't you think the fact that they're saying the words but they don't need to walk the talk is disingenuous, and that they are just smoke and mirrors with communities?

**Mr. Bob Delaney:** Chair, you cannot use an unparliamentary word in committee any more than you can in the Legislature.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. I think "disingenuous" is probably one of the more benign words, but, please, go ahead.



**Ms. Lisa M. Thompson:** Thank you, Chair.

**Mr. Bob Delaney:** In fact, Chair, that very word is not one that the Speaker or the deputies will allow you to get away with.

**The Chair (Mr. Shafiq Qaadri):** I would invite the Speaker to review his vocabulary. Ms. Thompson.

**Ms. Lisa M. Thompson:** Thank you, Chair.

**Mr. Bob Delaney:** I've been yanked to order on that very word, Chair—

**Mr. John Yakabuski:** “Yank” is a word that's coming into my mind.

**Mr. Bob Delaney:** —and that word is not permitted in the Legislature, and should not be permitted in our deliberations here.

**Mr. John Yakabuski:** Chair, this is unacceptable.

**The Chair (Mr. Shafiq Qaadri):** Thank you. Ms. Thompson, the floor is yours.

**Ms. Lisa M. Thompson:** Okay. So let's talk about the willing and unwilling host communities for any source of energy in Ontario. When should we start listening to folks? Do we need to take a look back in our rear view mirror and see what has not worked and see if we should be listening to those communities that have already been imposed upon? I'll cut to the chase.

**Mr. Adam White:** Well, I think it's fair to say that the way we go forward ought to be informed by the way we have proceeded in the past. Part of, I think, what Ontario is dealing with now is a function of legacy assets and legacy decisions. To the extent that contracts have been entered into based on permitted sites, then their commitments have been made. So, really, the question is on a going-forward basis, to the extent we're contemplating entering into new contracts or permitting new sites for generation. I think that the lessons of the past couple of years are an indication that things can be done differently and perhaps things can be done better with more local involvement and perhaps more local accountability.

I would say, my members themselves have a great deal of experience. Some of the industrial plant in Ontario is as old as some of our electricity infrastructure, and some of my members have some of the oldest electricity infrastructure in the province. The things that were tolerated 100 years ago in planning and siting are simply not tolerated today, and I think that that's an ongoing process.

**Ms. Lisa M. Thompson:** Okay—interesting. With regard to the location of gas plants, last week we heard from the OPA that Napanee was at the bottom of their list. In your opinion, what could have been done differently in terms of making sure that electricity was located in a manner that spoke to keeping costs down, keeping the source of electricity closer to the consumer to manage costs a little bit better? In your opinion, did the government drop the ball by not listening to the OPA?

**Mr. Adam White:** Well, there are two gas plants, and the story of each is different. The original site of the TransCanada plant was chosen by the OPA. I wasn't privy to the decision-making on that. I'm not knowledge-

able of the details of the decision, why that site and proponent was chosen over other potential sites and proponents. I know that there was a competitive tender for the supply of generation in the area, electrically speaking. As part of the legacy of our infrastructure, if you want to build a natural gas generator, you have to situate it close to natural gas supply and also approximate to the electricity infrastructure to deliver the power to market.

Again, I don't have the detailed knowledge why the Oakville site was originally chosen, why other sites were not chosen and why the Napanee site was chosen subsequently. I'm not sure of the details of that.

**Ms. Lisa M. Thompson:** Okay. When did you figure out, as many of us did, that the projected \$40-million cost was nothing but hogwash?

**Mr. Adam White:** Well, without responding directly to your question, I don't think it has come as a surprise to us that the price tag was what it was. At the very beginning, when the decisions were made, we knew from published accounts what the total contract value of the plants was going to be. And so I advised my members that in the worst-case scenario, the province could be liable for paying out the liquidated damages on the contracts.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Adam White:** That seemed to me like a worst-case scenario. So we weren't surprised that the number fell somewhere between nothing and the worst case.

**Ms. Lisa M. Thompson:** Who do you think led the charge to bury the true cost of relocating the Oakville gas plant?

**Mr. Adam White:** I have no opinion on that.

**Ms. Lisa M. Thompson:** Okay.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Thompson. The PCs yield their time.

Just before we offer the floor to Mr. Tabuns, just with regards to some of the exchanges, I would invite you all to review the agenda; I presume you've all internalized that by now. I would just simply encourage you to—Ms. Thompson, Mr. Yakabuski and to my other colleagues, whatever questions you're asking, be they on wind or nuclear or other matters, if they can be made relevant to the committee's mandate, then it is game here.

Mr. Tabuns, the floor is yours—20 minutes.

**Mr. Peter Tabuns:** Thank you, Chair. Good morning, Mr. White. Thank you for coming.

**Mr. Adam White:** Thank you.

**Mr. Peter Tabuns:** Following on your last answer, what was your worst-case estimate for the cancellation of the Oakville plant, in terms of financial damages to the province of Ontario?

**Mr. Adam White:** I can't say that we made a comprehensive review of it. I wasn't privy to or didn't make myself knowledgeable of the details of the contracts. My understanding is, to my recollection, that our guess was that the total liquidated damages would be in the range of \$1.2 billion.



**Mr. Peter Tabuns:** Okay, which is consistent with an internal email that I saw going between the Ministry of Energy staff and the Ministry of Energy political staff.

Were you ever consulted on the cancellation or relocation?

**Mr. Adam White:** No.

**Mr. Peter Tabuns:** Okay. By anybody on either side of this deal?

**Mr. Adam White:** No.

**Mr. Peter Tabuns:** Which demand projections do you rely on to give you a picture of where demand is going in Ontario in the next decade, and how would you characterize the demand picture?

**Mr. Adam White:** We make our own projections of demand on an aggregate, annual basis for the purpose of policy analysis simulation, more than anything else. My members do appreciate having our forecasts for production scheduling and informing investment decisions. Our demand projections are based on historical data and trend analysis, and my view is that demand is likely to be relatively flat in the coming rest of the decade, and has the potential to decline. Frankly, we see a lot of economic efficiency opportunities in managing demand more effectively than it has been in the past, to reduce peak demand during the peak periods in the summer, for example, and to increase off-peak demand during periods when we have surplus power.

**Mr. Peter Tabuns:** Okay. In your projections, will the Sarnia and Napanee plants be surplus to Ontario's needs?

**Mr. Adam White:** Not necessarily. The gas plants that Ontario has contracted for, from a planning perspective, as I understand it, were not specifically procured to provide baseload or intermediate energy. They are there to meet peak energy needs. The reason that gas plants are suitable for that is that they have a low capital cost and then you take the risk on the fuel price to run when you need them to run.

Ontario, over the next number of years, is going to be managing through the refurbishment schedule of the Darlington and Bruce sites. As well, we are going to be integrating renewable energy, which produces power intermittently. We need gas plant capacity to provide insurance that Ontario can meet peak demand and balance demand, given those—I don't want to say contingencies, but given the very abilities that we can see in the future.

**Mr. Peter Tabuns:** We've put a lot into these gas plants. We've spent a lot on nuclear refurbishment. Would you think that investment in conservation might give us some more cost-effective return on our investment?

0920

**Mr. Adam White:** Well, the OPA's numbers suggest that conservation and energy efficiency is less expensive than other forms of generation. Of course, you know, as some say, you can't power industry on conservation, but what we can do in Ontario is manage electricity demand more efficiently, to use less on-peak and use more off-

peak, improve the asset utilization of electricity infrastructure overall and reduce the total cost of power to consumers. That is our priority, looking at policies that can lead to lower costs for customers.

We certainly think that with emerging digital technologies and their application to the grid, and with the emerging sort of policy and regulatory framework—not just here in Ontario, but elsewhere—that there are new and emerging opportunities to engage customers more effectively, and we certainly support that.

**Mr. Peter Tabuns:** Thank you. I have no further questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns.

Back to the government side: Mr. Delaney, 10 minutes.

**Mr. Bob Delaney:** Thank you very much, Chair. Mr. White, talk to me a little bit about the importance of government's role, either directly or through such agencies as the OPA and the IESO, in the siting of projects such as gas-fired peak power plants.

**Mr. Adam White:** Well, I've worked in government and I've worked in the private sector, in the not-for-profit world. Government has a role to play in Ontario. Government is accountable and has constitutional authority to make decisions in this area. We have framework legislation that guides that, and it is the purview of the Legislature to make law.

Our form of government does provide prerogative to the crown in making decisions, and I think that's an important level of accountability, that these decisions are made in a political context. I think that is what Ontarians want. They understand that the job of elected officials is to represent their views, and I think that is the way it works in Ontario.

**Mr. Bob Delaney:** Okay. To bring the matter down, then, specifically to the two projects—out of 21 similar ones—that didn't go well, in both cases there was a call for proposals. In both cases, the entities awarded the contracts, had responsibility to find a site zoned by the municipality for either industry or power production and to acquire the site. In the case of Mississauga, the city of Mississauga actually approved the use of the site for the purpose for which it was zoned: power production.

How would you recommend, in going forward with siting such large energy projects, that either the OPA or the IESO or the government better engage with municipalities on those types of projects?

**Mr. Adam White:** As I've said already, I think local involvement is important. I think that it makes sense to consider opportunities for more local accountability in decision-making. After all, this generation, this electricity infrastructure, is being built to supply the needs of communities, and the needs of communities are defined to a great extent by official plans and decisions of the municipality. I think it's important when municipalities are planning their future that they consider the need for electricity infrastructure to support those plans. I think that's the important thing.



I will say, though, that it's difficult upfront to predict how the local people who live in the community are going to react to these proposals. Sometimes you'll propose a piece of infrastructure and you'll get a lot of local support, and other times you'll propose the exact same piece of infrastructure and you'll get a lot of local opposition, and that can change over time.

There is not, I don't think, any magic formula for how to do that right or wrong. I do think that there are opportunities to do it better, and I think, generally speaking, it is through involving people in communities early and often in the planning process and making them understand that there are trade-offs. In many cases, there are choices—and difficult choices—that have to be made, and I have a great faith in Ontarians. Ontarians make good choices, generally speaking, and to the extent that we can inform Ontarians about the choices that are before us, I think we can count on Ontarians to make the right decisions.

**Mr. Bob Delaney:** Both the city of Mississauga and the town of Oakville had municipal plans that, at the time they were drawn up, had explicitly approved these sites; in the case of Oakville, for heavy industry, and in the case of Mississauga, it was zoned “industrial/power plant.” But in neither case were the municipal plans regularly reviewed.

In looking at the siting of energy infrastructure, or indeed, the siting of energy-intensive industry, have either you or your membership given any thought to recommendations to municipalities on reviewing their municipal plans to ensure that energy infrastructure, for example, is given the same weight as waste removal or water or sewer?

**Mr. Adam White:** I can't speak to what my members may have considered or what work they may have done with local municipalities. I know that community relations are a very important component of the conduct of my members' business. Our industrial assets are like electricity assets: They are long-lived. They do need the ongoing support of the local community in which they operate to continue to operate. That is the social licence that they need to seek and sustain.

**Mr. Bob Delaney:** In looking at the siting of energy infrastructure, do you have any recommendations that, in the future, could lead either the province or proponents or the IESO or the OPA to avoid making any siting mistakes?

**Mr. Adam White:** To go back to Mr. Tabuns's questions around conservation, our advice to government in avoiding the difficulties associated with siting new supply is to focus policy choices on managing demand better. The less demand we have on peak and the more customers are engaged in managing their demand to support the needs of the grid, the less supply we need, and the less siting decisions are required. Those are superior outcomes for all of us.

**Mr. Bob Delaney:** Are there any jurisdictions that you know of, whether in Ontario or outside Ontario, that you feel Ontario could learn from regarding the siting practices for energy infrastructure?

**Mr. Adam White:** I don't have any specific knowledge of that. I would say, though, that these are choices made by Ontarians in the communities in which they operate. There are checklists, there are processes and there are generic approaches to this that are used in other jurisdictions. I tend to think that Ontario has evolved a fairly sophisticated approach to permits and approvals for major infrastructure, but attitudes change. The attitudes of communities change and the attitudes of Ontarians change in terms of what they're willing and unwilling to support.

**Mr. Bob Delaney:** Do you have any other recommendations for the committee on improving the siting of energy infrastructure in the future?

**Mr. Adam White:** As I've said, I'm not an expert on this. It's not something that I've devoted a lot of time to. I do hear from my members. I do understand the importance they place on community relations. I think that is key. There are good proponents and there are bad proponents, and you can have two identical pieces of infrastructure that encounter completely different reactions in the local community. I think it's important to note that these issues aren't always generic. Some companies are better at this than others, and there are some communities that are more receptive to this than others. I think the key thing is to consult early and often with local people to design processes so that people have a legitimate expectation of what the outcome will be and how their views will be considered.

**Mr. Bob Delaney:** How would you compare and contrast a good proponent and a bad proponent?

**Mr. Adam White:** I think it has to do with—this is going to sound vague—a spirit of openness and empowerment of local people. We're not here to tell you what we're going to do; we're asking your advice on what we might do. Those are two different approaches to the same kind of issue. Our members, I know, pride themselves on their community relations, and they work very hard to seek and obtain social licence for their investments. These are complicated facilities, with a range of potential effects in local communities, and they work very hard to make sure that local people are engaged and empowered to consult with them.

I think part of the challenge of this is that the general public tends to not be very aware of the implications of this infrastructure until they see it in their backyard, and then the question of how to inform and engage those people in that decision-making is a challenging one.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Mr. Bob Delaney:** Thank you, Chair. I think we're done. Thank you very much, Mr. White.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the PC side: Mr. Yakabuski, 10 minutes.

**Mr. John Yakabuski:** We have no further questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski.

To the NDP side: Mr. Tabuns.

**Mr. Peter Tabuns:** No further questions. I thank you for coming here.



**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns, and thanks to you, Mr. White, for your presence and testimony on behalf of the Association of Major Power Consumers in Ontario.

**Mr. John Yakabuski:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** A point of order, Mr. Yakabuski.

**Mr. John Yakabuski:** I'm not asking Mr. White to stay—

**The Chair (Mr. Shafiq Qaadri):** The witness is dismissed. Thank you.

**Mr. John Yakabuski:** Thank you, Adam, for joining us this morning.

Chair, on the matter of questions that this committee is allowed to ask, there is no restriction that questions are confined to the specifics of the mandate. That is our mandate. When a witness with a specific expertise comes before this committee, we should not be restricted with respect to the knowledge of this—this is the Association of Major Power Consumers in Ontario that we had today. The questions that we ask with regard to his mandate and his association's mandate should not be precluded based on the mandate of this committee. This is the ultimate finding that we have been charged to determine. The questions that we ask in relation to witnesses before this committee, I believe, are completely in order when they are to do with the expertise in front of us at the chair. Otherwise, this is going to be a tit-for-tat game of cat and mouse.

Mr. Delaney asked questions repeatedly that have nothing to do with the mandate. We're not interested in childish interjections continuously to try to thwart the work of this committee. This committee has a mandate, and in the final analysis, it will arrive at that. But to play these kinds of children's games with respect to every witness is ridiculous.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. Two issues with that: one, questions and their suitability for this committee; and secondly, as you said, unparliamentary behaviour, although you describe it in a different manner.

I think, on behalf of members of the committee and my fellow table officers here, we would have to reserve judgment per question. I'm not really offering a blanket statement of what is and is not in order, or is or is not relevant to the mandate.

Having said that, I will simply comment once again that I would invite all of us together to observe parliamentary decorum—language, deportment, and yes, I'm willing to consider different vocabulary issues. We can raise that perhaps in a different matter, but hopefully we'll let that stand.

Any further business before this committee before we recess?

**Mr. Bob Delaney:** Just a comment—

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney.

**Mr. Bob Delaney:** —to Mr. Yakabuski's most unfortunate point of error. Chair, no one may ascribe motive to an honourable member here, and the people

who sit here are indeed honourable members. And I do object, sir, to your repeated use of an inappropriate word in describing the questions that I ask. Your motives are completely, absolutely wrong, and you should be ashamed of having raised them.

*Interjection.*

**Mr. Bob Delaney:** While the floor is mine—

*Interjection.*

**Mr. Bob Delaney:** While the floor is mine—I did not interrupt you, Mr. Yakabuski. I didn't interrupt you, and you won't interrupt me, because there's something I have to say, and you cannot listen with your mouth open, sir. You've got to listen with your mouth closed and both ears open.

*Interjection.*

**Mr. Bob Delaney:** If all you want to do is talk, I'm going to talk right over you.

**The Chair (Mr. Shafiq Qaadri):** Order, please, gentlemen.

**Mr. Bob Delaney:** Chair, earlier, you provided a briefing to the committee on some general matters that I think would be helpful now that the PCs have added Ms. MacLeod, and I notice that Ms. Thompson is sitting in with us. May I request of the Chair that you review the briefing that you provided several weeks ago and provide an update on that at a future meeting?

**The Chair (Mr. Shafiq Qaadri):** We'll endeavour to satisfy you, Mr. Delaney, yes.

**Mr. John Yakabuski:** On another point of order—

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Yakabuski.

**Mr. John Yakabuski:** When I voice my opinion about Mr. Delaney's objections and call them childish, that is not impugning his motives; that is voicing my opinion on what his interjections are. And, quite frankly, as a point of order, calling him childish has nothing to do with his motives. It has nothing to do with his motives.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski, I would just invite you to—

**Mr. John Yakabuski:** It has nothing to do with his motives.

**The Chair (Mr. Shafiq Qaadri):** —maybe confine your remarks—

**Mr. John Yakabuski:** It is my opinion on his behaviour.

**The Chair (Mr. Shafiq Qaadri):** —to adulthood, and if we could call it a day—

**Mr. John Yakabuski:** It is my opinion on his behaviour.

**The Chair (Mr. Shafiq Qaadri):** Thank you.

The committee is now in recess.

*The committee recessed from 0934 to 1507.*

## ONTARIO POWER AUTHORITY

**The Chair (Mr. Shafiq Qaadri):** Colleagues, I officially call the meeting to order of the Standing Committee on Justice Policy. I welcome our next presenter, Ms. JoAnne Butler, VP of electricity resources, Ontario Power Authority, who will be sworn in by our Clerk.



**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Ms. JoAnne Butler:** Yes, I do.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Butler. Welcome back. Your five-minute address begins now.

**Ms. JoAnne Butler:** Actually, I don't have a five-minute address. I'm happy to be back to answer your questions. To those I recognize, nice to see you, and to those I don't, nice to meet you.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. I feel like saying one cannon will be supplied for you, but that, I think, applies to members.

Mr. Yakabuski, the floor is yours.

**Mr. John Yakabuski:** Thank you very much, Ms. Butler, for joining us once again. I recall your testimony at your earlier visit to the committee, and that was quite revealing at the time. We had the opportunity to ask you about the record search that was being done when the request for records was made, and the OPA at that time was one of the sources for the records. I believe you indicated that there was direction from either the Premier's office or the minister's office that the OPA should not produce some of the records that were requested. Is that correct?

**Ms. JoAnne Butler:** Actually, in my last time here at the committee, I was—

**The Chair (Mr. Shafiq Qaadri):** Sorry, Ms. Butler, do you mind aiming yourself at that mike a bit more?

**Ms. JoAnne Butler:** Sorry.

The document search really wasn't what I was involved in. I was more involved around the commercial deal and the relocations of the plants. The records have never been in my bailiwick. Maybe you're thinking of Ms. Jenkins—

**Mr. John Yakabuski:** I am thinking of Kristin Jenkins, now that you mention it, because at the time that I was asking this question, I was still waiting for my glasses to be sent down here and I couldn't read the questions that I have for you.

So let's try this again. Last time you were in committee, you stated the following—and this time I'll have it right:

"The government knew that \$40 million were the sunk costs that couldn't be repurposed in the new site. The government was also party to ... the memorandum of understanding with TransCanada which articulated clearly the costs that were going to be required, that we were going to pay going forward....

"Again, we have been very clear with the government: The sunk costs are \$40 million. The government was at the table when we negotiated the deal. They had signed the memorandum of understanding. They understand schedule A and schedule B, which outline the costs that we will be picking up going forward."

1510

Can you explain to us in more detail what were the contents of the memorandum of understanding?

**Ms. JoAnne Butler:** I'll do my best; it is public record. Fundamentally, it set out a bunch of deal principles that we would work collaboratively with, going forward, to relocate the Oakville generating station to a site at Napanee on an existing OPG site. We were going to use an existing contract structure called a CES, a clean energy supply contract, as the basis for this new contract. The principles around it were basically that we would pick up the sunk costs, the taxpayer would pick up the sunk costs, which were the \$40 million. We would pay TransCanada for their investment in the turbines, which was \$210 million. Because we didn't have a lot of time to look at the particulars around the site, and siting is certainly extremely important to a gas plant developer, it was left that we would pass through, and therefore not to be at TransCanada's account—when the numbers firmed up, we would pass through the cost to connect the plant to the gas system and the cost to connect to the transmission system, and we would take care of the gas delivery and management services to that plant.

There were also other elements of the memorandum of understanding. There was a break fee—this is all outlined, as well, in the Auditor General's report—that if, again, we were in a situation where the site wasn't going to work, there would be a break fee and then we'd go back into the arbitration regime, which is where we were before we signed this memorandum of understanding.

Those are, I think, fundamentally, the main principles around that MOU, but it is public record and the auditor did speak to it fairly substantially as well.

**Mr. John Yakabuski:** Yes, the auditor did speak to those issues in the Oakville report, but who didn't speak to them very much, in visits to this committee subsequent to your own, were members of the government, such as the current Premier. She insisted and re-insisted, at her appearance before the committee, that the costs were between \$33 million and \$40 million, maybe even as low as \$33 million. There seemed to be an absolute unwillingness to concede that there was knowledge of costs far in excess of \$33 million or \$40 million—we'll use the \$40 million, because that seems to be the accepted sunk cost number. There seemed to be a complete unwillingness or almost a decision that had been made, one that had been well considered, to insist that \$40 million was the cost to the public of that cancellation.

Were there any conversations with you people at the OPA to the effect that, "Well, you know that's not the true number. That may be the taxpayers' share of it, but taxpayers and ratepayers, the last time I noticed, were all coming from the same country and the same province; they're the same people"? Was there never any advice to the government that, "You really can't continue to go down that road," that, "If you really want to disclose what's happening here, you're going to have to talk about all the costs that are involved"?



**Ms. JoAnne Butler:** Again, in my role as vice-president of electricity resources—

**Mr. John Yakabuski:** Can I just get you to speak up a little bit?

**Ms. JoAnne Butler:** Sorry. In my role as the vice-president of electricity resources, I don't have conversations with government people about communications and about how they would communicate certain things. There may have been conversations, but I was not part of those communications discussions.

**Mr. John Yakabuski:** Could you confirm with certainty that the government knew of these details, that the cost was more than the \$40 million, well before your previous testimony, which took place on March 19, during a time when the government and the current Premier were continually reassuring the public that the cost was only \$40 million?

**Ms. JoAnne Butler:** Well, yes, and I said the same thing when I was here in March, that when we were all sitting around the table signing that memorandum of understanding, it was a tri-party agreement between the government, TransCanada and ourselves. Everyone was aware that there were, as we call them, certain buckets of costs: the sunk costs, the relocation costs—and even those relocation costs could be broken down into system costs and then actual site costs. There was an awareness that there were other costs to be determined and that while the principles were organized around this memorandum of understanding, we had until December 14 to firm up as much of the numbers as we could.

**Mr. John Yakabuski:** I'm aware that your testimony in March did indicate that. The reason I'm asking is because I needed you to reconfirm, because subsequent to your testimony, there was still insistence at this committee by the Premier herself that the costs were \$40 million. She said \$33 million to \$40 million. So you're confirming that they would have known prior to the Premier's visit here that the costs were well in excess of \$40 million, and in fact that the numbers—now, I know that the OPA and the auditor may differ on the method used, particularly in the factor that was used. I'll have to look—

**Ms. JoAnne Butler:** The social discount rate.

**Mr. John Yakabuski:** The discount rate; thank you very much. One was a 4% and one was a 6%. They differ on that methodology, but there was no question that everyone involved—the proponent, the government and all its agents, not including the OPA, and the OPA—were well aware that those costs well exceeded the \$40-million figure that we were continually being told.

**Ms. JoAnne Butler:** Yes, that would be my understanding.

**Mr. John Yakabuski:** Then there's no question that if the cabinet signed off on the memorandum of understanding, which they did, they would be privy to all the information that was present within the MOU. We would suspect that if they signed off on it, they read every bit of it.

**Ms. JoAnne Butler:** Again, the memorandum of understanding outlined the principles of the new contract

that we would be signing. As we moved forward, we all worked diligently over the course of the fall until the middle of December, the 14th, to firm up those costs. Some were still a work in progress at the time of the actual deal with TransCanada, but there was a general understanding that as we went forward, as we got to know more about the site, the costs would become firmer, as well as the savings. There were savings now that the plant was going to be delayed.

**Mr. John Yakabuski:** There were savings because of the later in-service date, which the auditor accounted for in her report, but the additional costs were significantly more than that.

During the duration of this committee, we have been running into a number of roadblocks, if you will. The most disturbing roadblock was the deletion and withholding of crucial documents. Were you at any point during your negotiations with TransCanada Energy or during any endeavour associated with the gas plant scandals instructed to run interference on the committee's work? Were you instructed to hand over or delete compromising emails surrounding the gas plant scandals?

**Ms. JoAnne Butler:** No, never.

**Mr. John Yakabuski:** Never. Thank you very much. Do you know who gave the orders to delete emails and withhold documents from the committee?

**Ms. JoAnne Butler:** No, I do not.

**Mr. John Yakabuski:** You're not aware of that at all. Can you think of any motive for why someone would withhold documents from the committee, delete emails, ensure that the information we should have had access to—we were denied access, at least for a period of time. Can you think of any motive that someone may or may not have had, and if so, who that might have been that would have had a motive to conduct themselves in that fashion?

1520

**Ms. JoAnne Butler:** No. That would be entirely speculative.

**Mr. John Yakabuski:** Pardon me?

**Ms. JoAnne Butler:** No. That would be entirely speculative on my part.

**Mr. John Yakabuski:** Okay. So you really don't have a view, then, as to why the government would make it so difficult for the committee to access the details of the events that transpired during the Oakville gas plant scandal?

**Ms. JoAnne Butler:** No. My job was to look at the commercial deal and—no.

**Mr. John Yakabuski:** Okay. So let's look at that commercial deal, then, and let's look at the—so you've had a chance to review the Oakville report?

**Ms. JoAnne Butler:** Yes, I have.

**Mr. John Yakabuski:** Do you happen to have a copy of it, or are you familiar enough—

**Ms. JoAnne Butler:** Yes, I do.

**Mr. John Yakabuski:** You have a copy with you?

**Ms. JoAnne Butler:** Mm-hmm.



**Mr. John Yakabuski:** Good. One thing that was clear in this report was that the Ontario Power Authority did not agree with the decision to relocate the plant to Napanee. Is that a fair assessment? Or at least they did not believe that was an optimal site.

**Ms. JoAnne Butler:** Yes. I think Mr. Andersen explained our ranking order when he was here last week, which was basically: Lakeview—it was taken off the table; another plant in the GTA—it was taken off the table; we were looking at Kitchener-Waterloo-Cambridge-Guelph because there was a peaking need up there, but, again, a greenfield location had its own elements concerning it. Then we looked at all the rest of the OPG sites in the province, including Lennox, including Lambton, including Nanticoke. In our overall planning assumptions, it was not our top choice, no.

**Mr. John Yakabuski:** You listed a number of options there. I wasn't counting how many you listed. It wasn't your top choice. Was it your second choice?

**Ms. JoAnne Butler:** I think our ranking would have been as I would have described them. Generally speaking, for the reliability of the system and for—the best bang for your buck, if you will, would be to locate your generation, your supply, close to where the load is. As you know, Toronto and the GTA and this area has a big load. It used to have Lakeview generating station. That went away.

So you would, as a planner—and I'm not the planners, but I have very high regard for what they do and how they do it—there would be an understanding that you would, again, place a cleaner generation supply closer to the load.

**Mr. John Yakabuski:** Would it be fair to say that it would be pretty far down that list of optimal locations?

**Ms. JoAnne Butler:** I think, if I recollect internal meetings with our planning group, they wanted to keep the east side of the province open for imports from Quebec and to make sure that we had accessibility to transmission for anything that we might do around our nuclear fleet, in that part of the province.

Was it not an acceptable site to build a generating facility? It was an acceptable site. It was beside an existing one. There was accessibility to gas and electricity. However, our planners have to look at the system as a whole, and in their view, they wanted to keep that corridor clear.

**Mr. John Yakabuski:** From a commercial point of view, from a financially defensible point of view, which I presume is part of what you do in your work—I don't pretend to know your job intimately, but a part of that process, I think, would be that you've always got to answer to somebody with respect to your recommendations and that they'd better make financial sense.

**Ms. JoAnne Butler:** Mm-hmm.

**Mr. John Yakabuski:** From your point of view, with your expertise, knowing what the costs are with the Napanee relocation—according to the auditor, \$513-million additional costs solely as a result of shifting that plant to Napanee, because of the gas distribution costs

and the energy transmission costs returning, etc. There's a number of them listed; we can go through them if you'd like.

From that perspective and with your knowledge of the system and your commitment, I would expect, to make sure that things are financially defensible or fiscally responsible, what would your view be of making that decision to relocate this plant to Napanee?

**Ms. JoAnne Butler:** From the pure deal perspective that we had with TransCanada, I think we got another very reasonable commercial deal. The actual original Oakville generating station was very competitively procured. We had good value and, as you've heard many times, a good net revenue requirement. When we dealt, as part of the negotiating team, around the commercial deal with TransCanada, we did back off some of that net revenue requirement, so in TransCanada's pocket, if you will. The auditor does say they might have gained \$170 million, but she also says we're going to save \$162 million because of the delayed payments. I think the deal itself was commercially sound for TransCanada and, net-net, about the same.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. JoAnne Butler:** If you look at the wider relocation, which is the ratepayer impact, yes, the ratepayer is picking up more costs because of the actual location of the plant, which is the system cost we talk about: the fact that it's further from the load, the fact that there are line losses, the fact that the transmission connection has to be factored up and the fact that we took over the gas delivery and management costs for that plant.

**Mr. John Yakabuski:** Can I just get one quick one in while I've got a minute here? You're defending the deal, and I respect and understand that. From a financial point of view, would we not have been able to make a better deal for the ratepayers of Ontario by choosing one of those other locations you talked about?

**Ms. JoAnne Butler:** We would have to have looked at every one of those locations on its own merits. However, the decision had been made that the plant would go to Lennox, and our job was to make—

**Mr. John Yakabuski:** When was that decision made?

**Ms. JoAnne Butler:** It was made the week of September—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. The floor now passes to the NDP. I commend you for getting through that session without any provoked points of order—a first, I think. Mr. Tabuns, 20 minutes.

**Mr. Peter Tabuns:** Thank you, Chair, and Ms. Butler, thank you for coming back.

Could you just finish answering Mr. Yakabuski's question: When was the decision made to put this plant in Napanee?

**Ms. JoAnne Butler:** It was made, I believe, the week of September 17, 2012.

**Mr. Peter Tabuns:** Were you part of the MOU negotiation team?

**Ms. JoAnne Butler:** I was not sitting at the table, but I was certainly involved in the background.



**Mr. Peter Tabuns:** Okay. When did you become aware or when did you, in the decision-making circles at the OPA, decide to take on the full gas demand and management costs at Napanee?

**Ms. JoAnne Butler:** That decision was made during the actual negotiations on that weekend leading up to September 22.

**Mr. Peter Tabuns:** So in the last few days of the negotiations, it was one of the final sticking points.

**Ms. JoAnne Butler:** Yes. It was a very intense time. It was a very short negotiation to begin with—it was very intense—and it was decided at that point that we would take on the gas delivery and management costs.

**Mr. Peter Tabuns:** So previously, you had not wanted to take on that cost.

**Ms. JoAnne Butler:** Well, generally speaking, we do have a mix of procurement, where in some procurements the supplier, as we call them, takes that on, and there are others where we do have the gas management committee and we have the same structures as we do at Napanee.

**Mr. Peter Tabuns:** Why was this an item that was only decided in the last few days of the negotiations?

**Ms. JoAnne Butler:** Again, the negotiating team wanted to just come up with a set of principles around how we would work, going forward, to finalize the contract structure. It was a negotiated outcome. It was something where there was enough risk that we felt it was better handled by us, as sort of protecting the ratepayer, in terms of the overall price that we would ultimately pay for that power.

**Mr. Peter Tabuns:** So did the OPA put forward the idea that ratepayers would take on this charge, or was it the province and their negotiators who suggested this?

**Ms. JoAnne Butler:** I can't answer that—exactly who put the concept of the OPA taking on the GD and M costs.

**Mr. Peter Tabuns:** Okay. When you were here last, you told the committee that you were aware of buckets of cost, different allocations. Were you aware of the size of those buckets as you were going into the last few days of negotiations?

**Ms. JoAnne Butler:** Certainly, around the memorandum of understanding time, no. Again, we had four days of knowing where the site was. To a power plant developer, understanding your site is a basic tenet of developing your project. You need to know how to locate your equipment, where your interconnections are, how the transmission is. So no, we didn't have firm costs. It was principles that we were going to work towards to get a final contract by December 14, 2012. As we moved forward in those months, we did firm up some of those costs but not—again, some of these costs take 12 or 18 months, and we were looking at two months to do the best we could to find the costs.

**Mr. Peter Tabuns:** Did you have a ballpark on the gas management fees at the time you—

**Ms. JoAnne Butler:** Yes, we did.

**Mr. Peter Tabuns:** And was that the number that you gave to us previously, around \$300 million to \$450 million?

**Ms. JoAnne Butler:** Yes. We assumed it was approximately twice what it would have been at Oakville.

**Mr. Peter Tabuns:** Okay. Now, the reduction in the monthly payments, the NRR, was supposed to take care of the cost of the gas turbine, the gas demand management and, I assume, a few other costs. But in fact, what we're paying for gas management at Napanee is a lot more than that. Why the difference?

**Ms. JoAnne Butler:** The reduction in the NRR was not to account for the complete gas delivery and management charges. Definitely, the reduction in NRR was to account for paying for the turbines upfront. We got a reduction in that. We also took off the gas delivery and management charges that would have been part of the NRR if the plant had stayed in Oakville. So essentially, we took away the obligation for TransCanada to look after the gas delivery and management. We netted off what they would have done in Oakville, and we said, "We will take that cost on."

So the cost doesn't go into TransCanada's pocket. There's no gain for them. All it really did was take the risk of those charges off their net revenue requirement, and we accounted for that with the full knowledge that we would be picking up the gas delivery and management going forward. We felt that was going to be the best value for the ratepayer in doing so.

**Mr. Peter Tabuns:** When you were going through these negotiations—and I'm just going to follow on what you were saying a few minutes earlier. The government had people sitting at the table who were part of the negotiating team working with the OPA, and they were aware of the scale of the gas management charges that you were going to be incurring, or we were going to be incurring?

**Ms. JoAnne Butler:** I don't actually know what was said around a table. I know in the background, we were assuming that the costs were going to be about twice as much as they were in Oakville. In actuality, they ended up, as you know, being higher—

**Mr. Peter Tabuns:** Yes.

**Ms. JoAnne Butler:**—which we've all accounted for. But our best estimate at the time was about twice what they were going to be in Oakville. I don't know how that number got engaged out in the negotiating table, but we certainly knew that was the case. That was our assumption.

**Mr. Peter Tabuns:** Again, from the OPA side, who was at the negotiating table?

**Ms. JoAnne Butler:** It was Colin Andersen, our CEO, and it was one of my directors, Darryl Yahoda, who runs my clean energy procurement.

**Mr. Peter Tabuns:** Okay. And from the government side, do you know who was at the table?

**Ms. JoAnne Butler:** I would only be guessing if I—

**Mr. Peter Tabuns:** Then don't.

Okay. The Auditor General in her report said, "We believe that the settlement with TCE will not only keep



TCE whole, but ... make it better than whole.” Do you accept that?

**Ms. JoAnne Butler:** What she said was that TransCanada could stand to gain about another \$170 million because of the interconnection costs that we picked up—I think it was actually \$225 million—because of the land deal that they had in Oakville and some other things, and the connections that we were putting in.

She also said that the ratepayer would be saving \$162 million because the payments are delayed, and the time value of money.

Again, we believe it’s very similar, and we also believe the deal itself is fundamentally the same as what TransCanada had at Oakville.

**Mr. Peter Tabuns:** And yet she says that TransCanada was made “better than whole.”

**Ms. JoAnne Butler:** Yes, she does, but we also—“better than whole”: They also have to go ahead and construct the plant. The risk now is that they have to meet all their requirements under the contract. They have to construct the plant; they have to commission it and start up; they have to maintain it and operate it and be there when we need it for 20 years. So, yes, she said it looked like \$170 million, but to the ratepayer, we still got the \$162 million back by the time delay. TransCanada has to wait longer now to receive those payments, and it has to wait longer to get its return on its money.

**Mr. Peter Tabuns:** Was the OPA obliged by its contract with TransCanada to make TransCanada whole when the cancellation was put forward?

**Ms. JoAnne Butler:** I think the auditor really does a good job of explaining how that came about. A contract is designed to protect the supplier and the buyer. We had good clauses in our contract; it’s a very good contract. There are clauses in the contract that would protect us from paying profits. However, as has been very clearly articulated in the auditor’s report, those protections were basically taken away from us through some discussions that were had with the Premier’s office.

**Mr. Peter Tabuns:** I’m well aware of that. We had Ben Chin in here, and he was very clear that the pressure came from the Premier’s office to shape the agreement so that TransCanada would be made whole.

Did the Premier’s office explore with you or anyone else in your division the protections that ratepayers had in the contracts that you had with TransCanada? Were they aware of those contractual protections?

**Ms. JoAnne Butler:** I can’t answer that question. I had conversations, as I said in my previous testimony, with Sean Mullin from the Premier’s office, but that was after the letter had been written and after the plant had been cancelled. I do not know what was said prior to that.

**Mr. Peter Tabuns:** The only thing that you could testify to, then, is that they didn’t talk to you—

**Ms. JoAnne Butler:** Me, JoAnne Butler?

**Mr. Peter Tabuns:** Yes, you, JoAnne Butler. Exactly.

**Ms. JoAnne Butler:** No.

**Mr. Peter Tabuns:** Okay. One of the things that you had to say the last time you were here was that you and

Michael Killeavy had discussed getting a written copy of the promise from the Premier’s office to TransCanada, telling them they would be made whole. You hadn’t been able to, at the time we looked into the correspondence. Was there ever a request to the Premier’s office to get that in writing?

**Ms. JoAnne Butler:** Certainly, from my position, no, there was not. I think Colin might have mentioned it in testimony. We never did get a written—no. From my position, no.

**Mr. Peter Tabuns:** In the end, we’ve had Ben Chin say that he carried a message, we had Colin Andersen testify that all his instructions on this were verbal, and you don’t know anything to the contrary.

**Ms. JoAnne Butler:** I know nothing to the contrary, nor was I given any written instructions.

**Mr. Peter Tabuns:** How involved were you in writing the October 7 letter from the OPA to TransCanada, telling them that the Oakville plant was over?

**Ms. JoAnne Butler:** I had zero involvement in it.

**Mr. Peter Tabuns:** That final letter: I assume that it substantially reduced your manoeuvring room in dealing with TransCanada.

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**Ms. JoAnne Butler:** Again, I think the auditor said in her report—I think she used “upper hand,” I think she used “incredibly advantageous position,” and I would agree with that, yes.

**Mr. Peter Tabuns:** Were you aware of the legal opinion that Aird and Berlis gave to the OPA in February 2010 about different options for cancellation?

**Ms. JoAnne Butler:** Yes.

**Mr. Peter Tabuns:** Out of curiosity, how is it that you were aware of it? What was your involvement with this letter?

**Ms. JoAnne Butler:** In my position in electricity resources, I look after all the procurements, and when they become contracts I look after all the contracts as well and I actually settle some of those contracts and pay out the suppliers. I expect my contract management team to understand what’s going on in all of their contracts, especially the ones that are looking potentially more problematic than others. We don’t want to be caught off guard. We don’t want to be behind the eight ball. This was just due diligence on our part, again, for us to understand clearly what our contract said and that there would be, again, understanding and due diligence on our contracts.

**Mr. Peter Tabuns:** This opinion was given to you in mid-February of 2010. You had signed the contract roughly four and a half months earlier. Why, in such a short period, were you looking at options for cancellation?

**Ms. JoAnne Butler:** We weren’t looking at options for cancellation, but the project was already in force majeure and, again, there was a lot of community opposition. We didn’t know where things were going to head, but we wanted to make sure that we had our due diligence done and that we understood what the ramifica-



tions were of taking certain actions. It was purely, in my view, good contract management, understanding there was a contract already in force majeure and understanding that there was considerable opposition toward the plant.

**Mr. Peter Tabuns:** The government has tried to say that it took the only option it had before us. Would you say that was a fair statement, that they did the only thing they could, given that Aird and Berlis looked at a variety of options?

**Ms. JoAnne Butler:** I can't speak for the government or the options that they choose to take. The contract was a good one and there were remedies and cures and conditions in the contract that would help both the supplier and the buyer.

We don't know what would have happened. All we do know, as the auditor said, is that we were placed in a very disadvantageous position going forward. That's really all we could say.

**Mr. Peter Tabuns:** I have two more questions and my colleague has one.

Did the government take the lowest-cost path in shutting down this plant?

**Ms. JoAnne Butler:** I don't think we'll ever know the answer to that question. Seeing that Oakville would never have been—I can't answer that question.

**Mr. Peter Tabuns:** Lastly, before we go to Mr. Bisson, you identified a need in Kitchener-Waterloo-Cambridge. What's happening there now to deal with that need?

**Ms. JoAnne Butler:** Our planning group is working with a local distribution company there, looking at a regional planning concept, and I think they're using a transmission solution and maybe some small distributed projects to help with that need up there, but right now I believe it to be a wires solution.

**Mr. Peter Tabuns:** Mr. Bisson?

**Mr. Gilles Bisson:** I'm not going to be long, and I'll give it back to my colleague. I'm interested in Mr. Tabuns's line of questioning and then your response in regard to you not knowing what it would have cost if it had gone the other way, if the government hadn't chosen that option.

I look at your email dated October 18, 2010, to Michael—

**Ms. JoAnne Butler:** Killeavy.

**Mr. Gilles Bisson:** Yes. I'm just reading here from your email: "I know ... but our hands are tied anyway ... government has backed us into a corner ... doubt that we will be allowed to go to litigation so let's just get on with it and see what options they can put forward ... " It's pretty clear that you guys were frustrated, at the very least.

**Ms. JoAnne Butler:** Yes, I'd say we were frustrated.

**Mr. Gilles Bisson:** This was probably not the direction you would have chosen if you had had the choice of how to terminate this contract.

**Ms. JoAnne Butler:** Again, I go back to my point: The reason you have contracts is to put the risk onto who

can bear the risk, to price that risk accordingly and to make sure that both the buyer and the seller have protection of certain things. When some of those protections are taken away from you, you are definitely left at a position of disadvantage.

**Mr. Gilles Bisson:** Yes. So the long and the short of it is that your hands were tied. You couldn't do what you could have done in order to mitigate the losses that we ended up incurring.

**Ms. JoAnne Butler:** We can't speculate on what would have happened. All we were saying there was that it wasn't the normal course of business. It wasn't the normal course of contract management.

**Mr. Gilles Bisson:** Can I ask you another somewhat unrelated question? In your working with this committee in order to provide documents, was there any time that any documents were deleted?

**Ms. JoAnne Butler:** I was asked that question. No, never. Never were we asked to delete anything.

**Mr. Gilles Bisson:** And there were no deleted documents whatsoever at OPA?

**Ms. JoAnne Butler:** Not to my knowledge. Not, certainly, where I deal with.

**Mr. Peter Tabuns:** Just going back to that email that Mr. Bisson referenced, you write, "Doubt that we will be allowed to go to litigation so let's just get on with it." What did you see as the advantage in going to litigation on this?

**Ms. JoAnne Butler:** Well, I don't know whether you could read into it whether I thought litigation was advantageous or disadvantageous. Litigation, as we all know, is expensive. It's timely. You don't necessarily win, and we would not have gotten any megawatts out of it. Having said that, we were having difficulty—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. JoAnne Butler:** —determining the actual financial value of the contract. We had our views; TransCanada had their views. We ultimately went to arbitration, which is a quicker route to determine the quantum of that financial value.

**Mr. Gilles Bisson:** Isn't the issue that, because you didn't allow force majeure to happen, you never got to litigation?

**Ms. JoAnne Butler:** No. No, no. Really, I think we always knew, again, that TransCanada might have taken that route, given what they had been led to believe or the expectations that had been set for them. Again, as prudent contract managers looking after the ratepayer, we had to look at every avenue that might possibly result from this and determine, ultimately, the best way forward.

**Mr. Peter Tabuns:** I assume that's my minute.

**The Chair (Mr. Shafiq Qaadri):** You have five seconds, but I'll conclude. Thank you, Mr. Tabuns and Mr. Bisson. To the government side: Mr. Delaney.

**Mr. Bob Delaney:** Nice to see you again, Ms. Butler. I'd like to spend my first time exploring some of the cost estimates made by the OPA and those made by the Auditor General.



The government has accepted the Auditor General's report—we have said that—but I want to explore some of the analysis that went into the OPA's numbers and some of your thoughts on those produced by the auditor. Both of you had a different start date, a different end date, and used a different discount rate. From our vantage point here, what I think the committee is trying to do is to find some measure of comparing like variables.

When Colin Andersen was before the committee last week, he talked about the source of the difference between the OPA's and the auditor's estimates as being primarily attributable to different accounting principles used, which is to say the different rates to put future costs and savings in today's dollars and different in-service dates for the plants in each analysis.

Given that, could you explain, in the context of the analysis by the Auditor General, the \$310-million cost for which Colin told us, "Yes, we stand behind our \$310 million"? Relative to the assumptions made by the auditor, could you explain the \$310 million that the OPA produced to account for the relocation of the Oakville plant to Napanee?

**Ms. JoAnne Butler:** I think the auditor actually had a really good chart at the end of her report which explained where the major differences were. Fundamentally, it comes down to the fact that we used a different discount rate and we used different start dates for the plants.

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Fundamentally, though, the same elements were included in both their numbers and in our numbers, which is basically the deal cost, then the site-specific costs and then the, sort of, system costs. We were fairly equivalent on most of those, other than when you bring it back to this point in time using a different discount rate, and when you start those times at different times because of your different belief of when those plants are going to be up, it does lead to a higher cost under the auditor's judgment.

**Mr. Bob Delaney:** Or scenario. Okay. We'll get to the discount rates in a bit, but I would just like to concentrate for a moment on these differing discount rates. The OPA used a 6% discount rate, while the auditor used a 4% discount rate.

Could you explain, first of all, what the discount rates are and what factors go into estimating their value?

**Ms. JoAnne Butler:** Okay. A social discount rate is basically the government cost of borrowing, I guess, and it uses this discount rate to compare all of its assets and its capital expenditures. I think, fundamentally, that the auditor described how they did it. They just took the long-term Canada bond rate, which is about 2%, and added 2% inflation and got 4%. She acknowledged that this is the bond rate at the time, which is the same methodology the Ontario Power Authority had been using, but at the time we were locking down some of our numbers, the bond rate was about 4%. Add inflation, and you get 6%.

Having said all that, bond rates are going to fluctuate over the period of the 20 years, and we benchmarked our

rate against the province of BC and the Ministry of Finance. We believe that 6% is appropriate, given where interest rates can go over 20 years, and also the fact that it corresponds to the little bit higher risk these projects have.

**Mr. Bob Delaney:** When we asked Colin Andersen about a Ministry of Finance report from August 2012, it recommended 5.5% as the most appropriate rate to be used in determining anticipated streams of costs and benefits that accrue to the province over time. Now, that report argued that 5.5% best reflects the opportunity cost of private capital and the current cost of Ontario government borrowing.

Did that factor into your choice of the 6% discount rate?

**Ms. JoAnne Butler:** I think, yes, all those things factored in. As well, we benchmarked—Treasury Board uses 5% or 10%, depending on the evaluation, Manitoba Hydro uses 8%, and BC Hydro uses 7%. Again, bond rates are very low right now, and they're going to move up and down. We believe that 6% reflects a reasonable rate, again, benchmarking what other utilities and other sectors are doing.

**Mr. Bob Delaney:** Okay. The OPA and the auditor also differed on the estimated start dates for the Oakville plant, had it gone forward, and also for the future Napanee plant. Now, the timing of those start dates is based on a number of different assumptions.

Could you explain how the use of different start dates affects the total cost estimate?

**Ms. JoAnne Butler:** We assumed the Oakville plant would start on the date it was contractually obligated to start. The auditor assumed it would be at least 20 months late, I believe, because of the permitting and issues that were ahead in the town of Oakville. We also assumed that the new Napanee plant would come online on its commercially contracted date, which is the end of December, I think, 2018. The auditor talked to some people and looked at TransCanada's website, which said it would come on in 2017.

When you bring the time value of money back, it does make a difference, because money is more valuable now than it is going out forward. As well, it did affect replacement power that we would need, depending—I mean, the dates did affect some of the analysis that we did.

**Mr. Bob Delaney:** Then, in your view, the savings that you mentioned are very likely to materialize because the Oakville plant will not be built, therefore saving the OPA from TransCanada's net revenue requirement payments before the construction of the Napanee facility is complete. Correct?

**Ms. JoAnne Butler:** Right. There are savings associated with—instead of the plant coming on in 2014 and coming on in 2018, and that's basically the time—we're not paying those payments out, and there's a time-value-of-money component.

**Mr. Bob Delaney:** Okay. Thank you. Aside from the different discount rates and start dates used, are there



other factors involved in the difference between the OPA's final number and the auditor's final number?

**Ms. JoAnne Butler:** Again, if you go to her chart on the last page, there was about a \$40-million difference, but the majority of it hinged around—

**Mr. Bob Delaney:** Just for clarification: That's a \$40-million difference over the span of 20 years. Correct?

**Ms. JoAnne Butler:** Yes. This is all brought back in today's dollars. There was an amount of difference due to other factors where it was 11%, or \$40 million.

**Mr. Bob Delaney:** Does the OPA agree with the auditor on the total value of the sunk costs for Oakville?

**Ms. JoAnne Butler:** On the sunk costs, yes.

**Mr. Bob Delaney:** Correct me if I'm wrong: This would mean that it's the future estimated costs and savings on which you disagree and not the costs that have already been incurred.

**Ms. JoAnne Butler:** Absolutely. I think the 2012 numbers are very firm. We had those audited. The auditor and her team looked over the audited sunk costs material, and we absolutely agreed on the costs that we know unequivocally, which is the \$40 million and the \$210 million for the turbines.

**Mr. Bob Delaney:** When the Auditor General came out with his estimates on the Mississauga plant, that number was also different from the OPA's original estimates. So does that again speak to the complexity in arriving at the final total?

**Ms. JoAnne Butler:** Mississauga was different in that the majority of costs had been spent. There were more sunk costs, so we could say, "These were the costs that we're going to have." The Oakville project is different in that there was very little sunk cost so there's more estimation, more—basically estimating going forward what things may or may not happen.

On the Mississauga report, I think we're very close on the sunk costs. I think where we differed—we didn't include the system losses on bringing the power up from Lambton to Mississauga. We're very close there, though, other than that.

**Mr. Bob Delaney:** Coming back again just on Oakville, the OPA also put out a preliminary estimate a few months ago on the cost to relocate the Oakville gas plant, and I think that estimate ranged from \$33 million to \$133 million. Do you recall that?

**Ms. JoAnne Butler:** Yes.

**Mr. Bob Delaney:** Who did the work to come up with that estimate?

**Ms. JoAnne Butler:** The work was done in a combination of my team and with the power system planning team. There were three main differences between that first estimate, the March 20 estimate, if you will, and the April 24 estimate.

The first major difference was the fact that, in good faith, we had been working with TransCanada to look at a project in Kitchener-Waterloo-Cambridge-Guelph, and we had asked them to reconfigure their turbines to have a fast-start capability. When we reconfigured the

turbines—it's like adding a performance element to your car—it would reduce the fuel efficiency.

When we were looking at it on March 20, we didn't account for that increased fuel efficiency because we actually thought we could use that fast-start ability to our advantage. Over the course of the month, we did talk to TransCanada and realized we couldn't, and therefore we had to add that price on.

The second one was gap power. In 17 or 18 years, we were going to need more power. We thought we'd underestimated, or had a closer look at the gap powering, so that brought the costs up in 17 and 18. Also, at the very end of the project, there were five extra years of power. We were going to avoid buying more power, and we sort of scaled that back.

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Again, as we moved forward, as we looked more closely and as we started to interact with TransCanada on the contract management piece, we were learning more things. Those were the three main differences between that estimate and the one in April.

**Mr. Bob Delaney:** So the closer you get to your final agreement, the lesser the degree of variability?

**Ms. JoAnne Butler:** It's like anything. The more certainty you have of what you're doing, then obviously, you have more certainty of what the final number is going to be.

**Mr. Bob Delaney:** In your estimates, all of these estimates were done by the OPA and not by the Ministry of Energy. Correct?

**Ms. JoAnne Butler:** They were all done by the OPA.

**Mr. Bob Delaney:** Looking at the costs associated with relocating Oakville, I believe the OPA has said that the government relied on that OPA's approach when it announced its original costing figures. From September 24, the OPA states very clearly it was in fact the OPA paying for the cost of the gas turbines as well as the gas management, but I think you said a little bit earlier there would be significant savings from a lower net revenue requirement. Correct?

**Ms. JoAnne Butler:** Right.

**Mr. Bob Delaney:** Then again, remembering back to that September 24 OPA backgrounder, it's clear that beyond the \$40-million sunk costs, there were going to be both additional costs and additional savings, correct?

**Ms. JoAnne Butler:** Right.

**Mr. Bob Delaney:** Could you tell me why you didn't give a specific cost at that time?

**Ms. JoAnne Butler:** Sorry. What time?

**Mr. Bob Delaney:** That would be late September 2012.

**Ms. JoAnne Butler:** Well, in late September 2012, we had only found out where the plant was actually located, so we only had fairly ballpark estimates. As we were saying, gas plant developers—I mean, the site is the essence of developing a plant. Once you know your site, you can configure your equipment and understand what your costs are going to be and how you're going to operate your plant. We didn't have a lot of knowledge



around that in September 2012. We were firming those cost estimates up as we went forward.

**Mr. Bob Delaney:** Thank you. In my last few minutes, to talk briefly about the total in cost increases that were referenced in the Auditor General's report, the Auditor General outlined in the report that increases in tolls required the approval of the National Energy Board. Prior to any National Energy Board review and approval, it would be a fairly complex calculation to determine how any future tolling decisions might impact on gas management costs associated with the Napanee facility. Would that be an accurate statement?

**Ms. JoAnne Butler:** Right. There has to be an expansion of the pipeline. It's a regulated business, and ultimately, anything would have to be approved by a regulator.

**Mr. Bob Delaney:** So in essence, a gas management plan has to be approved by the OPA prior to TransCanada Energy purchasing any gas services, correct?

**Ms. JoAnne Butler:** Absolutely. We have a gas management committee. That committee is to bird-dog, basically, for 20 years, to get the best possible price on services and delivery for the gas into that plant.

**Mr. Bob Delaney:** What's your view on the \$140 million for tolling in the report?

**Ms. JoAnne Butler:** It was flagged by the auditor. I think again, we need to understand the context around that. There is a piece of pipe called Parkway to Maple that needs to be expanded. It was going to be expanded; it was asked to be expanded in January 2011. We're not expanding anything as a result of the Napanee plant. It was already a work in progress so that we could get cheaper southern gas from New York up through Sarnia and over into eastern and northern Ontario. That gives more security of supply and another supply point, because right now, eastern Canada is serviced by Alberta gas coming through the main line, TCPL. Union Gas had asked for that expansion in 2011. It's from near the airport up to Maple, north of Toronto.

As with any pipeline expansion, there is a process that goes through. Certainly, it's volumetric: The more volume you get through that pipe, the less your tolls and your services are going to be. Ultimately, it needs to be approved by a regulator. The auditor was flagging that at this point, all we know is they're not going to exceed any more than 50% of what they exceed right now. It won't be any more than that.

**Mr. Bob Delaney:** Just to get some clarity on it, my understanding is that there was a settlement between or among TransCanada PipeLines, Enbridge, Union Gas and GMI that was unrelated to the Napanee plant. Correct?

**Ms. JoAnne Butler:** That was my point. It is unrelated to the Napanee plant in that this pipeline was going to be going through regardless of the Napanee plant, and arguably the Napanee plant helps because it's more volume that's going to be going through that pipe.

**Mr. Bob Delaney:** Okay. So the upgrades were planned, regardless of the existence or lack thereof—

**Ms. JoAnne Butler:** It's been a work in progress since January 2011.

**Mr. Bob Delaney:** How am I doing on time, Chair?

**The Chair (Mr. Shafiq Qaadri):** Two minutes.

**Mr. Bob Delaney:** Okay. Chair, I'm going to stop here. I know Ms. MacLeod is just dying to ask a few questions.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. I now pass the floor to the PC caucus; in fact, to Mr. Hillier, known affectionately to his friends, as I'm advised, as Dandy Randy.

Mr. Hillier.

**Mr. Randy Hillier:** Thank you, Chair, and I'll certainly be glad to take Bob's two minutes that he didn't use.

Good afternoon, Ms. Butler, and thank you very much for sharing your day here at the Legislature with us. I was listening to some of your discussions earlier, but I just want to get a couple of things on the record and clarified.

The Ontario Power Authority, of course, is an arm's-length agency of government. It has its own board of governors. That's the way you see the Ontario Power Authority: They're a separate, arm's-length agency?

**Ms. JoAnne Butler:** It's an agency of the government, yes.

**Mr. Randy Hillier:** And it has its own board of governors?

**Ms. JoAnne Butler:** Yes, yes.

**Mr. Randy Hillier:** And they are the people who provide the legal governance to the Ontario Power Authority. Correct?

**Ms. JoAnne Butler:** Right.

**Mr. Randy Hillier:** And it is indeed the OPA that enters into agreements and contracts with, in this particular case, TransCanada and the OPA; it is not the Ministry of Energy or any other ministry. It is two distinct, unique incorporated bodies.

During your discussions, in what we know, when the original Oakville plant was decided to be let out on the contract, I'm sure you viewed many different potential places to site or to have a contract to provide generating capacity to that load. Did the Lennox or Napanee area ever come up as a potential at that time to supply Oakville with power?

**Ms. JoAnne Butler:** No.

**Mr. Randy Hillier:** No, it was not in the cards. Of course, that would be—as you said earlier, you want to site your generating capacity as close to your load as is practical, and as we know, Napanee is quite a distance away, Lennox is quite a distance away from Oakville, and it would not make good engineering or economic sense to site a plant there for a load in Oakville. That's why it wasn't viewed or considered in the first place?

**Ms. JoAnne Butler:** Well, our planners do an independent power system plan that looks at the system as a whole, and there was a specific need for a generation plant in the southwest GTA area for three reasons: There was a reliability issue that we wanted to handle, which we're going to handle now with transmission; we were going off coal, and we need quick-ramping gas plants to be there for us, like the coal plants were; and we needed



it for capacity on the system and for the load growth. It was one of the highest-growing areas of the province. Lakeview used to be there; Lakeview went away.

**Mr. Randy Hillier:** We're all aware.

Now, I know that you would know this now; I'm sure you probably knew it at the time. The talk of relocating the TransCanada site to the Lennox site—you knew at that time that there was an existing OPG facility there in Lennox, that it's a 2,000-megawatt generating station—

**Ms. JoAnne Butler:** Yes.

**Mr. Randy Hillier:** —that it is gas-fired or oil-fired and that it operates at very low capacity. Right?

**Ms. JoAnne Butler:** Mm-hmm.

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**Mr. Randy Hillier:** Typically, over the last number of years, we've seen the Lennox OPG facility operate at 5%, 10%, 15% or 20% of its capacity, and its capacity is double that of the new TransCanada plant. Did OPA ever contemplate or consider using the OPG Lennox station as a means to supply the load in the southwest GTA? And if so, what were the considerations?

**Ms. JoAnne Butler:** The first thing I'd like to say is that Lennox is a very important resource for our system, but it's also probably the last plant that would be dispatched onto the system on the hottest, neediest electricity day of the year. It's a peaking plant. It serves a different duty; it has a different responsibility to our system.

**Mr. Randy Hillier:** But it's bought, it's paid for and it's there.

**Ms. JoAnne Butler:** Yes, that's true. It's a peaking facility—

**Mr. Randy Hillier:** I'm well aware of it. I've been in on a number of occasions.

**Ms. JoAnne Butler:** What the new plant will do is provide intermediate service, intermediate duty. From midnight to 7 in the morning we have the nukes and Niagara. That's our baseload. Then, as we ramp up our demand during the day, we bring on our gas plants, of which this plant could well be one. Because of its cost structure, it will still be one of the lower prices. It will be a lower price and have a different regime that it works under and it bids into our system. So it will be used, as appropriate, in an intermediate capacity, and a ramping capacity as well, which is what we're replacing coal—

**Mr. Randy Hillier:** But we know that there is not much need, there is not much demand, for additional power up in eastern Ontario. The demand is down here in the southwest GTA.

**Ms. JoAnne Butler:** Clearly, the load is here, but we're all hopeful for economic development and growth and—

**Mr. Randy Hillier:** We know that there's another empty facility that's owned by OPG that's much closer to the load in the southwest GTA, and that, of course, is the Wesleyville plant near Bowmanville, which is sitting empty and derelict, but there is a substantial amount of land there much closer to the load that needs to be satisfied. Did OPA consider or look at going into

arrangements with OPG for leasing any of that land at the Wesleyville site?

**Ms. JoAnne Butler:** I was involved with some internal meetings with our planners; I highly regarded their ability. Wesleyville was one of the locations. But, again, in the order of where we felt it would serve the system best, it just wasn't one that, again, our planners—it was still on the east side of Toronto. In the internal meetings that I was involved in with the planners, they wanted to keep that eastern corridor open.

**Mr. Randy Hillier:** So even though Wesleyville is 200 kilometres closer to the load than Lennox, it was still not practical to contemplate Wesleyville as a site?

**Ms. JoAnne Butler:** It was one of the sites on the list, for sure. We looked at every available site. In the final analysis, many things probably went into determining where the final site would be. I was not privy to those conversations.

**Mr. Randy Hillier:** Would OPA have those details as to the rankings and the justification of what sites were looked at and where they ranked and why they ranked in those places? Would you have that available for the committee to study?

**Ms. JoAnne Butler:** I know that our planners do have a spreadsheet with those sites on them, and if it was the committee's wish that we provide that, we can do that.

**Mr. Randy Hillier:** Okay. That would be much appreciated.

I've got one last question, Ms. Butler. Knowing the structure of the OPA, knowing that you have a board of governors, knowing that the OPA engaged in a contract with TransCanada, I have to ask the question: Why did the OPA feel compelled to break a contract or to get involved in this whole fiasco? Was there direct communication from the minister to your board or was in direct communication from your board to you that said, "We are not going to do what is reasonable and justified and maintain this contract, but we are going to listen to the Minister of Energy or the Premier"—whoever it might be; I think that's still to be determined. What compelled OPA to leave their best practices off to the side and do the bidding of the Premier's office?

**Ms. JoAnne Butler:** I can't speak for the board. I—

**Mr. Randy Hillier:** Has this been raised between yourself and the board or between senior management and the board?

**Ms. JoAnne Butler:** I think it was very clear that this plant wasn't going ahead, and I think that the board wanted to protect the ratepayer as much as they could, and that expensive litigation with no megawatts at the end of it, with no guaranteed outcome—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Hillier. To the NDP side: Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Mr. Chair. Ms. Butler, the eastern corridor—you were just responding to a question of Mr. Hillier's. Your planners were very concerned to keep the eastern corridor open. Can you expand on that?

**Ms. JoAnne Butler:** Sorry?



**Mr. Peter Tabuns:** Can you expand on why your planners wanted to keep the eastern corridor open, and what do you mean by “the eastern corridor”?

**Ms. JoAnne Butler:** I have the highest regard for the planning group at the OPA and I would really let them answer that question. It just goes to system reliability and future forward thinking for 20 years with Quebec, with hydroelectric facilities and with what we’re going to do with nuclear. It was optionality; it kept options open. For the real specifics of it, we could ask the planners.

**Mr. Peter Tabuns:** But if I can take it as very high level, your people thought it was important to keep options open for the import of power along that eastern transmission line.

**Ms. JoAnne Butler:** And for potentially what might happen with our nuclear fleet going forward, whether it was new or refurbished.

**Mr. Peter Tabuns:** Did you, in your planning, do an assessment of the cost comparison between power from Quebec and power from this Napanee plant?

**Ms. JoAnne Butler:** I personally did not, no.

**Mr. Peter Tabuns:** Are you aware of planning within the OPA on that?

**Ms. JoAnne Butler:** Our planners are always looking—again, as our CEO likes to say—under every rock for all the alternatives. Certainly that’s one that we talk about, not only from Quebec but from Manitoba. It is something I’ve heard in internal meetings with our planners that they do recognize.

**Mr. Peter Tabuns:** Do you know what the price spread is between power from Quebec and power from this Napanee plant?

**Ms. JoAnne Butler:** No, I do not.

**Mr. Peter Tabuns:** The 2010 long-term energy plan said that this plant wasn’t needed. In fact, it said, “The 2007 plan outlined a forecast need for an additional three gas plants in the province, including one in Kitchener-Waterloo-Cambridge and one in the southwest GTA.

“Because of changes in demand ... two of the three plants—including the proposed plant in Oakville—are no longer required.”

Did you agree with the long-term energy plan that this plant was no longer required?

**Ms. JoAnne Butler:** I think that’s a three-year view. What had changed was not that the need wasn’t required, but the timing of that need had changed. It was pushed out, especially as we go forward with the nuclear refurbishments.

**Mr. Peter Tabuns:** So at the time of this writing, that plant wasn’t required?

**Ms. JoAnne Butler:** I can’t recall exactly. If that’s the face value of the LTEP, then that’s the face value of the LTEP.

**Mr. Peter Tabuns:** The OPA didn’t have any disagreement with that?

**Ms. JoAnne Butler:** That would have been informed by discussions with the OPA.

**Mr. Peter Tabuns:** How often do you expect to operate the Napanee plant? You say that it ramps up; it’s

intermediate. What percentage of the time will it be operating?

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**Ms. JoAnne Butler:** I can’t say unequivocally, but again, it’s an intermediate duty. It’s an intermediate cycle. It’s not baseload and it’s not a peaker, so maybe somewhere between 20% and 35%. It will definitely depend on how the need changes, and when we go into the refurbishment cycle, it may be used more. It may not be used as much, depending. Again, that’s part of the long-term scenarios that we look at.

**Mr. Peter Tabuns:** Is the expectation that during the refurbishment cycle, this plant could well be used for a lot more than 35% of the time?

**Ms. JoAnne Butler:** Again, I can’t answer that. It would have to be modelled and I would need to circle back with the people who do that and understand the system more holistically.

**Mr. Peter Tabuns:** Okay. Litigation: You were concerned on October 18, 2010—“Doubt that we will be allowed to go to litigation.” In the spring, OPA made an offer to TransCanada which was rebuffed, and then you were ordered by the government to make another offer, even though, from the emails that I had read, you, the OPA, were not enthusiastic about it; you didn’t see the point in it. Were you prepared to go to litigation on this in the spring of 2011?

**Ms. JoAnne Butler:** Actually, in the spring of 2011, TransCanada did send in a notice to the crown. But what we decided to go forward with was an arbitration, a closed arbitration. That was when the head of Infrastructure Ontario was brought in, to try to find a location, to try to relocate the plant, and also to determine the quantum of what that financial value was. We still weren’t agreeing on what that financial value was, and so we thought the best course of action was to get a third party to come in.

We had done our modelling, basically, on industry-standard assumptions. We had brought in peer reviews, we had brought in experts to look at what we thought the value was. TransCanada had their own view of it. We couldn’t agree, and we thought the best course of action was to get an arbitrator to come in and determine the quantum of that financial value that had been committed to TransCanada, and we would parlay that into either another project or whatever it would ultimately end up with.

**Mr. Peter Tabuns:** As I read the emails, it was the secretary of cabinet who initiated bringing in Infrastructure Ontario and getting this arbitration rolling. That’s correct, is it not?

**Ms. JoAnne Butler:** I have no knowledge of that, other than what I heard Shelly Jamieson say in her testimony.

**Mr. Peter Tabuns:** Fine. But it wasn’t the OPA that initiated the arbitration.

**Ms. JoAnne Butler:** No.

**Mr. Peter Tabuns:** Okay. The auditor notes that in the arbitration, a number of arguments that you would



have used to defend ratepayer interests were set aside. Were you part of discussions about prep for that arbitration?

**Ms. JoAnne Butler:** I was peripherally involved, but really, it was our legal department that was working with the litigator we had at another law firm that was working on the arbitration.

**Mr. Peter Tabuns:** Okay. I'm going to go back, then, to that last round of negotiation that resulted in the memorandum of understanding. You've noted it was a very short period of time?

**Ms. JoAnne Butler:** Yes.

**Mr. Peter Tabuns:** How were you informed that this negotiation for an MOU was going to be coming about?

**Ms. JoAnne Butler:** I was informed by my boss, Mr. Andersen from the OPA, that we were going to try to resolve this and look sort of one more time to try to see if we could find a suitable relocation for the Oakville plant, and away we went.

**Mr. Peter Tabuns:** Do you know roughly when that happened?

**Ms. JoAnne Butler:** It was maybe the Wednesday or Thursday of September 15 or 16.

**Mr. Peter Tabuns:** And how long a period was the negotiation?

**Ms. JoAnne Butler:** It basically went over a long weekend, if you will, starting from a Thursday to an early Monday morning.

**Mr. Peter Tabuns:** That was a very hurried negotiation.

**Ms. JoAnne Butler:** It was a long weekend, yes.

**Mr. Peter Tabuns:** Have you ever negotiated a plant under those circumstances before?

**Ms. JoAnne Butler:** Well, I don't think there was an expectation that we were going to come out of this with the i's dotted and the t's crossed. I think there was an expectation that we would come out with the principles of what we would do going forward. Knowing that we had the site and knowing we had very limited time to look at what the site actually offered—OPG was involved and it was their site, so they were doing their own due diligence. I think there was an expectation that we'd come out with a set of principles—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. JoAnne Butler:** —that would set us up going forward to ultimately do a new deal at the new site.

**Mr. Peter Tabuns:** And was OPG used as a resource in this process of negotiation?

**Ms. JoAnne Butler:** Yes, I believe so. They were obviously very involved because it was their site. They were at their own table, if you will, doing what they needed to do with Infrastructure Ontario and TransCanada.

**Mr. Peter Tabuns:** Why did Colin Andersen say you were going to take one last shot at negotiating?

**Ms. JoAnne Butler:** We were about to go into, really, the final stages of the arbitration, which is where we'd be giving what we thought the values were. The minister wanted us to see if we could stand down on the arbitra-

tion and see if we could get a relocated project. Like-for-like, moving it on wheels, was a good deal.

**Mr. Peter Tabuns:** Do you have any—

**Mr. Gilles Bisson:** No.

**Mr. Peter Tabuns:** No?

Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the government side. Mr. Delaney, your final 10 minutes.

**Mr. Bob Delaney:** Thank you very much, Chair. In our final 10 minutes, I'd like to explore a few questions on siting. I'm going to start off with Oakville. I'm going to refer to the Ford lands in Oakville. The site was chosen by the proponent, TransCanada Energy. Correct?

**Ms. JoAnne Butler:** Yes.

**Mr. Bob Delaney:** And the site had originally been zoned "industrial" by the town of Oakville.

**Ms. JoAnne Butler:** I believe so, yes.

**Mr. Bob Delaney:** Is there a reason that the OPA told prospective proponents not to be concerned about municipal opposition when choosing the site to build the plant?

**Ms. JoAnne Butler:** Again, this was brought up in the auditor's report. When we were directed by the government to procure 900 megawatts down in that southwest area of Toronto, we set out the ground rules. We had four highly qualified proponents who went forward into the RFP stage.

We had to level the playing field and we had to be consistent with the rules that we had when we started that procurement. We wanted to be fair to everyone who was involved, and basically left it up to the proponents at the end of the day. They knew of the issues that were there, and it was up to them whether they wanted to continue putting forward a bid, knowing full well that, if they won the bid, there were things that they would have needed to deal with.

**Mr. Bob Delaney:** The experiences in both Oakville and Mississauga showed that perhaps the OPA and the government both had a lot to learn in the process of arriving at a site for energy infrastructure. There was a recent IESO and OPA report on the best practices for energy siting moving forward. It produced 18 recommendations, and I believe the government has announced that it will implement all 18. How did the OPA and the IESO come up with these recommendations?

**Ms. JoAnne Butler:** It was a summer of consultation, really. We went out and engaged hundreds and hundreds of communities, the public, municipalities, think tanks, organizations and trade organizations, and just basically said, "What can we do to make this better? Because we agree with you: There are things that we can do to improve. Now that we're moving forward here, there are things that we can do." We basically went out and asked people what they thought.

**Mr. Bob Delaney:** This may not be a very fair question in 20/20 hindsight, but if in 2004—and I believe the OPA took over the arrangement in 2005—you knew then what you know now, are there any changes you would



have made at the time, before the discussions with both Eastern Power and TransCanada had gotten too far advanced?

**Ms. JoAnne Butler:** I won't speculate on the past, but I will say that I think that the three fundamental tenets of the work that we did this summer are the right way to move forward.

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The first one is to engage early and often—not that we weren't doing it in the past, but certainly it's front and centre. We need to get out there, keep people engaged, potentially more around energy literacy, etc.

The second one is getting the municipalities involved. I think there is a wide understanding now that maybe the municipalities, if they want to have a voice in it, have to have some accountability to help with the regional planning, to become more involved with the regional planning and build it into their own plans. As well, we can work with the municipalities in terms of our procurements and maybe add more weight to the municipal voice or maybe have some sort of way to lessen the burden on the municipalities, because again they don't like proponents coming in their door, lots of them, all looking for sites. So I think there are improvements that we can do with the municipalities: local voice, local accountability.

Then I think the third one was the fact that with the government ministries themselves there could be better coordination. There's environment, there's planning, there's energy, there's us, there's IESO. I think, again, that just goes with collaboration, understanding, more widespread knowledge of what we're doing and why we're doing it.

I think all of those elements, going forward, are going to make for a better process.

**Mr. Bob Delaney:** Mayor McCallion is my constituent in Mississauga–Streetsville, and I know Oakville Mayor Rob Burton fairly well. Both of them have said to me that neither they nor their councils nor the cities are opposed to power generation within their borders. Certainly, in the time that Mayor Burton was here, he talked about some of the serious drawbacks in the proposal for the size and the location of the plant where it was.

Looking at fast-growing municipalities, what are some of the things that municipalities can do, particularly in high-growth areas as they develop, to include contingencies for the provision of both the generation and the transmission of electricity so that as municipalities grow, there will in fact be reliable electricity for the citizens of those areas where the houses don't even exist today?

**Ms. JoAnne Butler:** I think that very much encompasses where we're heading with the regional planning approach that we're working with, with the OEB, with LDCs, with the municipalities. I think strong collaboration among all those groups and understanding energy needs—not now, but in the future—and understanding what type potentially of energy requirement they want—is it from wind, is it from solar, is it from whatever, or

distributed, maybe smaller stuff?—but understanding the rate impact. I think it really comes down to communicating more effectively and understanding regionally what we need and why we need it and what's the best way to get it, and working in that manner.

**Mr. Bob Delaney:** To come back again to the relocation, when Deputy Minister Serge Imbrogno was here just recently, among the things he said was, "We had a short list of sites that included Lambton, Nanticoke, Lennox and Wesleyville." I should clarify that he said the OPA was part of the "we," because the ministry had relied on the OPA to provide a high-level assessment at each of those sites. Mr. Imbrogno also said that "each of those sites ... had their pros and cons" and that "at Nanticoke, there would be additional costs related to building the gas pipeline...." Lambton required "potential transmission upgrades of \$500 million" for a 900-megawatt plant. "Wesleyville didn't really have an existing facility on it. There were transmission issues, and we weren't sure if there'd be a willing host." However, Lennox had "access to gas, access to transmission. It was a willing host."

How did the OPA provide that analysis to the Ontario Ministry of Energy?

**Ms. JoAnne Butler:** Again, I was not involved in any meetings around the planners working, you know, talking to the government about the planning portion of it. Our planners, again, know the system inside out, know the ins and outs of all these sites, and would have been in meetings with the government officials and explained to them each and every aspect of those sites, but I was not personally involved in those meetings.

**Mr. Bob Delaney:** Well, in the last minute and change, in what I guess we both hope will be our last pleasure to have this conversation before the committee, when it comes to siting, what final remarks or suggestions would you like to leave with the committee?

**Ms. JoAnne Butler:** Again, I think I'd just go back to look at the work that was done over the summer and look at those three main principles: engage early and often; municipal voice, municipal accountability; collaboration among all the ministries—energy policy and energy literacy—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. JoAnne Butler:** I think getting out there and working on those aspects would certainly help, going forward. I think there are some things we can do with our procurements in terms of how we rate them and where the points come and maybe contracting a little later in the game. Again, it's something that we need to put our minds to and try to make better.

**Mr. Bob Delaney:** JoAnne Butler, thank you very much for having come a second time to share your insight with all of us.

**Ms. JoAnne Butler:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Bob Delaney, for your questions, and thanks to you, Ms. Butler, for your presence. I commend all members of the committee for having a relatively benign afternoon.

We do have a motion before the floor, I understand, from Mr. Bisson, for which purpose I am instructed we will recess for a few minutes.

*The committee recessed from 1636 to 1650.*

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. The committee's back in session. We have a motion from Monsieur Bisson.

Monsieur Bisson, s'il vous plaît, introduisez votre motion.

**Mr. Gilles Bisson:** I move that the Standing Committee on Justice Policy request from Cabinet Office and cabinet committees, including the priorities and planning committee, documents from May 16, 2012, to October 2, 2012, related to the May 16, 2012, request of the Standing Committee on Estimates on the cancellation of the Oakville and Mississauga gas plants; and that this shall include but not be limited to: correspondence, minutes, briefing notes, emails, PIN messages, BBM messages, SMS messages, memoranda, issue or House book notes, opinions, submissions and any drafts of or attachments to those documents; and

That the documents be tabled with the Clerk of the Committee without redaction by 12 noon on November 26, 2013; and

That all submissions be tabled as searchable PDF documents.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bisson. Are there comments on this before we vote on it?

**Mr. Bob Delaney:** Chair, I would like to ask whether or not we can have until our next get-together to determine whether in fact this information has already been provided, and pursuant to previous motions there are and continue to be rolling releases of documents pertaining to exactly what's on here. We have no objection to turning

over the material. The government has already said that it will, but what's not clear to me at this point, not having seen the motion before today, is whether or not we already have, and if we have, at our next get-together or before, as soon as I can get the material, we'll let Mr. Bisson know where it is and what date it was submitted and whatever else—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Point understood. Just for the committee's awareness, our next official meeting is Tuesday, November 19. Are you willing not to defer? Thank you.

**Mr. Gilles Bisson:** As far as I know, these documents have not been provided. If they have been provided, then they'll instruct us when they come back, and when they reply in regard to my request, if some of the stuff or all of it has been given, they can tell us at that time.

**The Chair (Mr. Shafiq Qaadri):** That's fine. Thank you. Any further comments before we vote on this motion?

**Mr. Bob Delaney:** With the proviso provided by Mr. Bisson that if those documents have in fact been provided, rather than providing a second copy of everything, we'll note when and where it's already been provided, yes.

**Mr. Gilles Bisson:** Sure. I'm okay with that.

**The Chair (Mr. Shafiq Qaadri):** All right. Thank you. The point's understood.

Those in favour of the motion presented by Mr. Bisson? Those opposed? The motion carries.

If there's no further business before the committee, once again I thank you for a benign afternoon. The committee is adjourned until Tuesday, November 19.

*The committee adjourned at 1653.*





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Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Ms. Lisa MacLeod (Nepean–Carleton PC)

Mr. Peter Tabuns (Toronto–Danforth ND)

Ms. Lisa Thompson (Huron–Bruce PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

#### **Also taking part / Autres participants et participantes**

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

#### **Clerk / Greffière**

Ms. Tamara Pomanski

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## Legislative Assembly of Ontario

Second Session, 40<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 21 November 2013

# Journal des débats (Hansard)

Jeudi 21 novembre 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

Privilèges des députés



Chair: Shafiq Qaadri  
Clerk: Tamara Pomanski

Président : Shafiq Qaadri  
Greffière : Tamara Pomanski

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Thursday 21 November 2013

Jeudi 21 novembre 2013

*The committee met at 0833 in committee room 2.*

## MEMBERS' PRIVILEGES

HON. BOB CHIARELLI

**The Chair (Mr. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice.

I welcome our next presenter, who joins us for a rematch: the Honourable Bob Chiarelli, Minister of Energy of the government of Ontario. Mr. Chiarelli, you will be sworn in by our able Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Hon. Bob Chiarelli:** I do.

**The Chair (Mr. Shafiq Qaadri):** Your five-minute opening address, Minister Chiarelli, begins now.

**Hon. Bob Chiarelli:** Thank you. Good morning, and thank you for inviting me back to the committee for a second time. I wanted to take this opportunity to provide the committee with an update on what we have been doing to address siting issues around large energy infrastructure projects.

On May 6, 2013, I asked the Ontario Power Authority and the Independent Electricity System Operator to work together to develop recommendations to improve how large energy infrastructure projects are sited, and to include local voices in the planning and siting process. The OPA and IESO released their report, *Engaging Local Communities in Ontario's Electricity Planning Continuum: Enhancing Regional Electricity Planning and Siting*, on August 1, 2013. The report included 18 recommendations that reflected feedback from over 1,250 Ontarians.

We will be implementing the 18 recommendations of the OPA and the IESO. This reflects our belief that communities need to have a say at the beginning. Actually, I want to table the document that was prepared by both of those agencies for the complete report with the Clerk.

On August 21, we announced the creation of municipal energy plans and aboriginal community energy plans to support local energy planning. The programs will help small and medium-sized municipalities and aboriginal

communities develop energy plans that focus on increasing conservation and help identify the best energy infrastructure options for a community. They will better align infrastructure, energy use and land use planning in a way that increases conservation, supports economic development and identifies opportunities for clean energy.

Engaging municipalities and aboriginal communities is part of our plan to build strong communities powered by clean, reliable and affordable energy. As a former mayor and regional chair, I understand how important it is to have municipal input in local planning and siting decisions. This is why we have taken these steps to make sure we get siting decisions right the first time.

Ontario has come a long way since 2003, when we were faced with aging energy infrastructure, an electricity deficit, reduced generation and a system that was reliant on expensive imports and dirty coal. Our government has made significant progress transforming our electricity system into one that Ontarians can count on. It's reliable.

Since 2003, Ontario has successfully sited 21 gas-fired generation facilities. As minister, I have had an open-door policy, meeting with municipalities, community organizations, stakeholders, aboriginal partners, energy experts and the public. I've been very clear that we need to get siting decisions right the first time. Since day one, the new government has been committed to getting all the facts out about the Mississauga and Oakville gas plants relocations.

It was the Premier who ordered the full disclosure of documents, restructured the committee and asked the Auditor General to examine the cost of relocating the Oakville gas plant. Ontarians deserve to have a full understanding about the cost to relocate the Oakville and Mississauga facilities. I want to thank the Auditor General and her team for their work. Now that the auditor has reported, I look forward to receiving recommendations from this committee to further improve the siting process.

Those are my opening remarks, Chair.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Chiarelli. To Ms. MacLeod, 20 minutes.

**Ms. Lisa MacLeod:** Thanks very much, Chair. Good morning, Minister. It's good to see you today.

**Hon. Bob Chiarelli:** Good morning.

**Ms. Lisa MacLeod:** Thank you for coming in to the committee. Just a couple of very quick questions, and then I'd like to go into a little bit more detail about the AG's report, if that's okay with you.

The first question I have is one that I'm starting to want to ask all of the deputants as they come in, because I'm starting to listen to a common theme here from ministers of the crown. I'm just wondering, how did you prepare for today's presentation? Who wrote your remarks and who did you speak to before you arrived here?

**Hon. Bob Chiarelli:** Essentially, my staff—my chief of staff and one or two other staff people. I led the discussion—the information and materials that I wanted—and certainly outlined what we should be doing in the opening remarks.

**Ms. Lisa MacLeod:** Is your ministry or the Premier's office involved in providing template speeches, statements or speaking points to other deputants, particularly to other members of cabinet?

**Hon. Bob Chiarelli:** We provide information when we're asked for it. I have no knowledge of that type of organized plan, although it wouldn't surprise me that we would try to organize our responses in some semblance of organization. It wouldn't be to influence people in terms of what they are going to say.

**Ms. Lisa MacLeod:** Would you be willing to provide this committee and table the various drafts of your statement and your Q&As?

**Hon. Bob Chiarelli:** Yes, I'll have my staff provide that for you.

**Ms. Lisa MacLeod:** Sure, thank you. Would you also be able to do that—

**Hon. Bob Chiarelli:** Spelling corrections and grammatical corrections included.

**Ms. Lisa MacLeod:** Sure. Would you be able to do that for Serge Imbrogno as well, the deputy minister?

**Hon. Bob Chiarelli:** Well, I mean, he'll have to speak for himself.

**Ms. Lisa MacLeod:** But he's your deputy minister.

**Hon. Bob Chiarelli:** I mean, he was here and you had the opportunity to ask him. You have the opportunity to ask him to come back. I have not tried to influence the deputy in any way, shape or form in terms of his actions on this very important file. I've kept my distance, in fact, from him so as not to be seen to be influencing, and that has been my policy. If it has anything to do with the deputy, I would suggest that you recall him and ask him. I haven't coached him, and it would be improper for me to coach him in any way, shape or form. I would expect that he would come back here and answer questions quite independently.

0840

**Ms. Lisa MacLeod:** As minister, would it be fair to say that, with deputy ministers, they would follow through on your instructions or not?

**Hon. Bob Chiarelli:** No, I would say not. I would say that I think the whole experience of these hearings in this committee is a case of you and your colleagues actually pointing out how senior officials have been providing information that you feel is compromising to us. I think the evidence is that they're coming here in an independent and objective manner, and I'm sure that, in the course

of today, you will be raising some things that some senior people have stated as undermining our position. I think the evidence shows just the opposite.

**Ms. Lisa MacLeod:** Sure. Well, I'm actually just trying to get Serge Imbrogno's draft points. It wasn't that elaborate, but since you've pointed it out, it's appearing to me that you're suggesting that some of the bureaucrats who are coming here to appear before us have gone rogue, and that they don't follow government instruction. I would just like your point of clarification on that, if you would, because that's effectively what you've just told us.

**Hon. Bob Chiarelli:** I think that we have an excellent public service, and I commend them for their independence, for their independent advice that they provide on almost every file that I've been working on. They don't gild the lily to make what we want or what we're suggesting we want to do look better. They are responsible. They do their job in an objective, serious, professional way. I believe they've done that before this committee.

**Ms. Lisa MacLeod:** In your previous testimony to this committee, you claimed that you were "present at a number of cabinet and treasury board meetings that involved the Oakville or Mississauga gas plants." In reading your previous transcript, it wasn't clear to me that you were—you weren't clear on what was said at the meetings, or what the issue of cost brought up, at all. I'm wondering if you can elaborate at this time, if the benefit of time has helped you with your memory.

**Hon. Bob Chiarelli:** My recollection of what happened is what I believe has been reflected in all of the discussions that we've had, or all of the discussions that the committee has had.

I think most cabinet members would remember the discussions about sunk costs. I remember discussions about sunk costs, and I remember the numbers around the sunk costs. I also remember the testimony that had been here by a number of people who indicated that those are the numbers that were provided by the Ontario Power Authority at that time, in that context.

**Ms. Lisa MacLeod:** In your way of thinking, then—just going back to the previous set of questions where you say that bureaucrats in the Ontario government don't follow your instruction—

**Hon. Bob Chiarelli:** I didn't say that. I said that they act independently.

**Ms. Lisa MacLeod:** No, I asked if they followed your instruction, and you said no, they act independently.

**Hon. Bob Chiarelli:** Acting independently may be agreeing with us. It may be doing what we ask. It may be saying, "You know what? I think this is going down the wrong path." That's what I mean in terms of their objectivity. They're doing their jobs as public servants.

**Ms. Lisa MacLeod:** Apparently when they were being objective in December 2011, JoAnne Butler and Colin Andersen, who work with the OPA—who work for a government agency—and Serge Imbrogno, who is your Ministry of Energy's deputy minister, said that you, in cabinet, and your colleagues would have known as early as December 2011 that there would be additional costs



above those sunk costs of \$40 million, upwards of at least \$700 million at the time.

The problem with this, and the reason I asked you about the instructions or not, is it really does seem like your government is trying to distance itself from the bureaucrats and trying to ignore the costs that were incurred above and beyond the sunk costs. I find that a very disturbing game, and it's one that I brought up with Dwight Duncan a few weeks ago.

I'm going to ask you this, Minister—I have the greatest respect for you; we're both Nepeanites. I just want to know who is telling the truth in this committee. Is it JoAnne Butler, Colin Andersen, Serge Imbrogno, Shelly Jamieson—who said you would have known, in Shelly's estimation, about “buckets of costs” exceeding \$40 million—or is it the members of the cabinet and the Premier who have come before this committee who said it was only \$40 million?

**Hon. Bob Chiarelli:** The information that we had at cabinet was based on OPA information. The Ontario Power Authority provided the sunk cost value, which we were using. There has been a lot of uncertainty around the cost, both of Mississauga and of Oakville. I would say that it goes back to September 25, 2011. This is a quote from Mayor Rob Burton from Oakville: “PC leader Tim Hudak says the Oakville power plant cancellation ‘cost \$1 billion’ and suggests the Mississauga power plant cancellation ‘may cost another \$1 billion.’”

Then: “On October 5, 2011, on the day before the provincial election, in front of the still-under-construction Mississauga power plant, PC leader Tim Hudak promises to stop the power plant if he wins the election”—

**Ms. Lisa MacLeod:** Bob, I appreciate—

**Hon. Bob Chiarelli:** No, no. I just have one more sentence.

**Ms. Lisa MacLeod:** No, no. It's okay, because I think your government House leader has more than covered that off; I could recite that without even looking at it.

I guess the point is, we're not the government, nor is the NDP—

**Hon. Bob Chiarelli:** The government House leader—I don't know what you mean by his covering it off, but I would suggest to my Liberal colleagues to ask me the question—

**The Chair (Mr. Shafiq Qaadri):** Colleagues, one at a time—

**Hon. Bob Chiarelli:** —finishing the quote.

**Ms. Lisa MacLeod:** Chair, I would appreciate the opportunity just to continue asking questions.

Minister, I guess it's cute; I mean, you can go back, but the problem with that line—and I think it has been largely dealt with in the media—is that you are the government.

The worst part of this whole process is not just the \$1.1 billion. It's something that even my eight-year-old daughter understands: It's the cover-up. It's the attempt to put obstacles in place of the opposition and the public in getting the information that they want and need. That's why we're here. It's not just to get the true cost, but also to find out why that elaborate scheme was dealt with.

In fact, I had this anecdote—it's true, a couple of weeks ago—with my daughter. She decided to cut her own hair and then she tried to not be truthful about who did it. And I said, “Honey, in mommy's job, lots of people make mistakes, but it's the cover-up or the lie that gets you in trouble.”

Do you know what? For an eight-year-old, she knew who has done that, and she said, “Your government.” The thing is, even an eight-year-old knows what you've done is wrong.

**The Chair (Mr. Shafiq Qaadri):** Ms. MacLeod, just for a moment, I'd invite you to not impute motive to your daughter or to the minister.

**Ms. Lisa MacLeod:** I guess the problem then becomes this: We now know that you think your bureaucrats and your deputy ministers are either rogue or independent or not following instructions, or they have not told you the truth or they have not told this committee the truth. Those are the options.

The second thing is that you're sticking to the sunk costs issue, and this is one that I raised with Dwight Duncan a couple of weeks ago and which I think is very significant. In order for you folks to continue to talk about that \$40-million cost rather than a \$1.1-billion cost, you made a distinction between being a taxpayer and a ratepayer.

I'm going to ask you a couple of questions. Minister, are you a taxpayer?

**Hon. Bob Chiarelli:** Yes.

**Ms. Lisa MacLeod:** Are you a ratepayer?

**Hon. Bob Chiarelli:** Yes.

**Ms. Lisa MacLeod:** Are they the same thing?

**Hon. Bob Chiarelli:** Sometimes.

**Ms. Lisa MacLeod:** You're a ratepayer and a taxpayer, are you not?

**Hon. Bob Chiarelli:** There could be people paying hydro rates who are not paying taxes. There are a lot of people who don't pay taxes.

**Ms. Lisa MacLeod:** Are you a ratepayer and a taxpayer?

**Hon. Bob Chiarelli:** I am a ratepayer and a taxpayer.

**Ms. Lisa MacLeod:** Of the sunk cost, who is paying for the \$40 million?

**Hon. Bob Chiarelli:** The \$40 million is paid by the taxpayer.

**Ms. Lisa MacLeod:** And above and beyond that, who is paying for the rest of the \$1.1 billion?

**Hon. Bob Chiarelli:** Over a 20-year period, the ratepayers.

**Ms. Lisa MacLeod:** The ratepayers. So your government went into the Legislature and has come into this committee, and went to the public through the press and said that there was a \$40-million hit to the taxpayer, ignoring the fact that there would be over \$900 million in costs to the ratepayer, which presumably and largely are the same people. You knowingly misled the public for two years. You knowingly—

**The Chair (Mr. Shafiq Qaadri):** Ms. MacLeod, you're well aware of the parliamentary protocols.



0850

**Ms. Lisa MacLeod:** You knowingly said in the House that there was one number when you knew, in fact, that would not be the case. I take great exception to that.

I'd like to move on to the AG's report and before, again, I just would like to know what your opinion of her report was and her work.

**Hon. Bob Chiarelli:** First of all, I want to comment on the words that you just spoke since the last question you asked. I don't accept the premise of all those facts that you stated. Okay, that's your perception, and I disagree very strongly with a number of the statements that you made. In fact, you made a very long statement—

**Ms. Lisa MacLeod:** I disagree with lots of the statements you make too, but this is a question period for us.

**Hon. Bob Chiarelli:** —then you changed tack and you changed subject matters and then you asked a different question.

**Ms. Lisa MacLeod:** No, in fact, I did not. I talked about: What is the difference between ratepayers and what is the difference between taxpayers? The whole point of this, from the very first question that I asked—who prepared your statement and whether or not you could provide me with your speaking notes and whether or not you could provide Serge Imbrogno's—and the distance that you are trying to now make between you and bureaucrats and the fact that bureaucrats have come into this committee and have contradicted the statements and the testimonies by ministers of the crown, including yourself and your Premier, and then the semantics that you relied upon in order to differentiate between the \$40-million mark and the \$1.1-billion mark, and whether or not you support the auditor's findings—I think, actually, that it all works very well together.

I have the greatest of respect for you, but I have a job to do. Okay? You have a job to do; I also have a job to do, and that is to ask questions with respect to why, as I said before, it has been hard for us to get to the true cost. So if I may ask, again—I'd like to focus on the AG's report: What is your opinion of her work?

**Hon. Bob Chiarelli:** In view of the fact that you respect me, I would ask you to respect me by giving me as much airtime in answering the questions as you do in placing the questions.

**Ms. Lisa MacLeod:** With respect, sir, you did have a five-minute opportunity to speak and you do have 30 minutes to respond to questions from your Liberal government.

I'm simply asking you questions, and I would like an answer. I've gone through why I've asked you the questions. I think it's reasonable. I think that my focus now is asking you what your opinion is of the Auditor General's work. If you're not prepared to do that, then just say so, so I can move on to the next questions that I have.

How much more time do I have, Chair?

**The Chair (Mr. Shafiq Qaadri):** Five minutes.

**Ms. Lisa MacLeod:** Five minutes.

**Mr. Bob Delaney:** Chair, not wishing to interrupt the friendly discussion, but I'd just like to ask clarification

on this. In looking at the mandate, is an opinion of the Auditor General's report within the mandate of the committee? I'd like to have an opinion on that.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. I will confer.

**Ms. Lisa MacLeod:** Can we stop the clock?

**The Chair (Mr. Shafiq Qaadri):** The clock has been stopped.

**Mr. Gilles Bisson:** The auditor's report is—

**Mr. Bob Delaney:** I'm not talking about the auditor's report; I'm asking about the question to request an opinion—

**Ms. Lisa MacLeod:** I'm asking about the auditor's work on the committee.

**Mr. Bob Delaney:** —of the auditor's opinion.

**Ms. Lisa MacLeod:** I'm asking about the auditor's work and the numbers on which she has derived.

**Mr. Gilles Bisson:** Chair, obviously, the auditor came to this committee, was asked questions—

**The Chair (Mr. Shafiq Qaadri):** Thank you. The question is relevant.

Please continue, Ms. MacLeod.

**Ms. Lisa MacLeod:** Thank you. So if I could very quickly ask you: What is your opinion of the auditor's work? I ask this because it seems—and rightly so, because of this interruption—that your colleagues on the opposite side are displaying a complete lack of respect in regard for the AG's work—

**Mr. Bob Delaney:** On a point of order: Again, I object. Standing order 23(h) prohibits the ascribing of motive or—

**Ms. Lisa MacLeod:** —and they have been trying to refute or cast doubt on its finding, and this has been the case since the auditor reported.

**Mr. Bob Delaney:** —or making an allegation. This is not necessary.

**The Chair (Mr. Shafiq Qaadri):** Thank you, and both your points are excellent and very welcome. Please continue.

**Ms. Lisa MacLeod:** Thank you very much.

What's your opinion? Is it the same as Mr. Delaney's?

**Hon. Bob Chiarelli:** I wasn't paying attention to Mr. Delaney's comment.

**Ms. Lisa MacLeod:** I don't pay attention to him sometimes either.

**Hon. Bob Chiarelli:** In one of your extensive preambles, you mentioned that we were the government and we should be providing answers. To a large extent, when it comes to this committee, the opposition is the government because you control; you have a majority and you can decide what happens. I want to refer to—

**Ms. Lisa MacLeod:** How much more time?

**Hon. Bob Chiarelli:** —a meeting that you held in April. It's important to note that at that particular meeting, Colin Andersen was in attendance, and he brought to the table two estimates of the cost of Oakville. He brought his own, which was different from his estimate of about three weeks earlier. So we had an estimate from the OPA three weeks earlier; then we had—



**Ms. Lisa MacLeod:** That's important. Again, you're contradicting, and you're now questioning the OPA—

**Hon. Bob Chiarelli:** But you're interrupting me. Why don't you let me finish and then ask a question?

**Ms. Lisa MacLeod:** Well, I also have only four minutes left, and you have 30 minutes with your colleagues here. I'm sure they'll let you have free range.

I asked you very clearly—and it's a simple yes or no question—whether or not you agree with the auditor's findings and what your opinion was of her work, and I'm not getting that. So I'm going to move on. I want to go on to my final question because I have about two minutes left.

In your previous testimony, you referenced that you and the former minister never talked about the gas plants issue during the transition process. You also claimed that you were briefed on the issue in February 2013, and you even provided the brief to the committee. We've read the brief, and we are quite surprised by how brief it was and how basic it was; it really didn't provide much detail.

Nevertheless, you went on to claim that when it came to the gas plant issue, you were very cautious to keep your communication with Mr. Andersen of the OPA to a minimum. It's clear that that's still the case. Why were you so apprehensive to learn about the gas plants? Were you afraid to find something that might compromise you? Were you advised to stay away from the issue?

Finally, you claim that you "didn't think it was wise ... as a new minister to come in and have discussions with Minister Bentley, given the issues that were before" the justice committee. Can you elaborate on that? Can you respond to us why you didn't think it was important to be fully briefed on this gas plant scandal when you first became minister?

**Hon. Bob Chiarelli:** First of all, I was willing to accept briefings that were appropriate and timely.

**Ms. Lisa MacLeod:** And this wasn't appropriate?

**Hon. Bob Chiarelli:** Quite frankly, from the experience—from my observations of what this committee was becoming—

**Ms. Lisa MacLeod:** And what's that? What's the committee becoming?

**Hon. Bob Chiarelli:** —I felt that any conversation that I might have with Colin Andersen would be characterized by you and others in the opposition as trying to influence their decisions, their evidence, their assessments, and the—

**Ms. Lisa MacLeod:** But didn't you do that by cancelling the gas plants? Didn't your government, after setting up the OPA and saying that you were going to remove the politics from siting gas plants, then intervene in their work? Isn't that what you're continuing to do today? You're either contradicting them outright, or somebody somewhere is directing them to say certain things. Again, I have a real disappointment with this government in the way this has been handled.

**Hon. Bob Chiarelli:** I'm surprised that you're disappointed with this government. Quite frankly, I just disagree with everything you've said, and that's my answer.

**Ms. Lisa MacLeod:** Well, the feelings are mutual.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. MacLeod. To the NDP side. Je passe la parole à M. Bisson.

**Mr. Gilles Bisson:** Merci beaucoup, monsieur le Président.

Minister, I want to know in regard to the request by the estimates committee back in May 2012—there was a request by the estimates committee to request documents. Those documents were not readily made available. In fact, there was an obstruction as far as releasing those documents. Were you party to any of the discussions at that time in regard to the decisions about the release of documents?

**Hon. Bob Chiarelli:** My engagement with the release of documents is relative to—let me check and see what the date of it is here.

**Mr. Gilles Bisson:** I realize you were the minister after that. My question is, were you aware of any discussions that were going on within the government in regard to the non-release of documents to the estimates committee?

**Hon. Bob Chiarelli:** No.

**Mr. Gilles Bisson:** So you never heard anything about it?

**Hon. Bob Chiarelli:** No.

**Mr. Gilles Bisson:** Did you read the newspaper and see it in the newspaper?

**Hon. Bob Chiarelli:** I often read the clippings etc.

**Mr. Gilles Bisson:** Were you aware, in the clippings, that the request by the estimates committee had been made to release those documents? Were you aware?

**Hon. Bob Chiarelli:** I don't recall exactly when I became aware of it, actually.

**Mr. Gilles Bisson:** Let me see if I've got this right: So back in May 2012, you're reading the clippings, and you're not aware that estimates has requested documents from the Ministry of Energy. Is that what you're saying?

**Hon. Bob Chiarelli:** I probably wasn't. Quite frankly, I don't follow every detail of every ministry. In 2012, I was Minister of Transportation and Minister of Infrastructure, and I was putting a lot of time and effort into it. I will deal with issues as they come to my desk and my attention.

0900

**Mr. Gilles Bisson:** Fair enough, but the question I'm asking is, were you aware that there was a request by the estimates committee back in May 2012 to release documents? Yes or no?

**Hon. Bob Chiarelli:** No, I was not.

**Mr. Gilles Bisson:** At what point—

**Hon. Bob Chiarelli:** I was aware that there were requests for documents, but I can't say that I knew where they were coming or where they were going to. There were requests to the Premier's office, to the ministry, to the OPA—

**Mr. Gilles Bisson:** Okay, so you were aware there was a request, then.



**Hon. Bob Chiarelli:** There was a whole series of requests and challenges in terms of information—

**Mr. Gilles Bisson:** So you were aware that there was a request for release of documents.

**Hon. Bob Chiarelli:** I believe so, yes.

**Mr. Gilles Bisson:** Okay. That's more plausible. I was beginning to wonder how that would have worked.

Anyway, obviously you found out, because you've seen it in the media, but also, did you have discussions with any of your caucus colleagues in regard to this particular request? Did you have any casual conversations?

**Hon. Bob Chiarelli:** No.

**Mr. Gilles Bisson:** There were no conversations whatsoever between yourself and any member of the Liberal caucus in regard to the release of documents in May or June of 2012?

**Hon. Bob Chiarelli:** If I had any, they were very casual, very social and in passing, just about the experience that everybody was going through at that time.

**Mr. Gilles Bisson:** Did you have any kind of relationship at the time with your cabinet colleague Mr. Bentley? Would you consider yourself friends in any way?

**Hon. Bob Chiarelli:** Well, I consider him a colleague.

**Mr. Gilles Bisson:** Okay. Did you guys chat every now and then?

**Hon. Bob Chiarelli:** I had very little conversation with Mr. Bentley, actually.

**Mr. Gilles Bisson:** Okay. The Premier of the day, Mr. McGuinty?

**Hon. Bob Chiarelli:** No.

**Mr. Gilles Bisson:** Didn't have chats with him either?

**Hon. Bob Chiarelli:** Not on any of these issues, no.

**Mr. Gilles Bisson:** No, no. My question is, did you not have casual conversations with Mr. Bentley? Yes or no? In May or June.

**Hon. Bob Chiarelli:** I had social interchange with him. Social interchange and small talk.

**Mr. Gilles Bisson:** Okay, and in that idle chat—you know, we all do it in our work, walking down the hall: "How's it going? What are you doing?" Did you ever have any of those casual conversations around the release of documents with Minister Bentley?

**Hon. Bob Chiarelli:** No.

**Mr. Gilles Bisson:** Did you have any such conversations with the Premier?

**Hon. Bob Chiarelli:** No.

**Mr. Gilles Bisson:** Was this particular discussion ever raised in caucus?

**Hon. Bob Chiarelli:** I think there were discussions raised, but I don't recall them going into a lot of detail.

**Mr. Gilles Bisson:** Raised in regard to the request by the committee to release the documents? That would have been discussed at caucus, right?

**Hon. Bob Chiarelli:** The actual decisions around the gas plant issues were almost exclusively done and discussed, I think, by the Premier's office and the agencies involved.

**Mr. Gilles Bisson:** I'll go back to my question: Was there any discussion at caucus in May, June and July of 2012 in regard to the non-release of those documents?

**Hon. Bob Chiarelli:** I have no recollection of a specific conversation topic or agenda item concerning the release of documents. I think there may have been caucus members—

**Mr. Gilles Bisson:** Okay. I just want to clarify this, because you seem to be saying two things. Was there any discussion at Liberal caucus in May, June, July or August around the issue of the non-release of documents?

**Hon. Bob Chiarelli:** I don't take notes in caucus—

**Mr. Gilles Bisson:** Neither do I.

**Hon. Bob Chiarelli:** —and I don't recall specifically. I have no specific recollection of a day, who said what. I do know that concerns are regularly raised by caucus members. I never raised the issue. I never spoke to the issue. I can't tell you, and I'm under oath here, a name of one person who may have discussed it in caucus.

**Mr. Gilles Bisson:** So, I'm going to ask you the question another way: Were there any discussions at caucus in May, June, July or August of 2012 in regard to the non-release of documents?

**Hon. Bob Chiarelli:** I can't recall that with any certainty.

**Mr. Gilles Bisson:** You don't remember?

**Hon. Bob Chiarelli:** I can't recall that with any certainty. I don't remember. I can't recall it. I don't remember.

**Mr. Gilles Bisson:** Are you pleading Richard Nixon here?

**Hon. Bob Chiarelli:** Well—

**Mr. Gilles Bisson:** To the best of your recollection, but it may be?

**Hon. Bob Chiarelli:** No, I find that insulting.

**Mr. Gilles Bisson:** No, no. But, Minister, you and I have been around a long time. You were here when I first got here in 1990, and we know how this place works. There are discussions amongst colleagues casually, and these items often are discussed at caucus. I was asking a specific question: If there had been any discussion at caucus in regard to this—

**Mr. Bob Delaney:** Chair, I—

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney on a point of order.

**Mr. Bob Delaney:** Chair, I've listened to a discussion go down a tangent over what is discussed in caucus, and I don't think that is in order.

**Mr. Gilles Bisson:** Yes, it is.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Your point, I guess, is partially well taken.

I would just re-inform committee members that the witness is not reducible to a yes or no answer, so that's the first thing. Secondly, we are allowing our colleagues to have as much leeway—I think at some point, if the same question is asked again and again and again, and obviously eliciting approximately the same answer, we would encourage you to move ahead.

Go ahead, Mr. Bisson.



**Mr. Gilles Bisson:** So, Chair, I'm asking the question over and over again because two things were said: Yes, there were casual conversations in caucus, and later, it was stated, "No, I don't recall there being discussions at caucus around this matter."

**Hon. Bob Chiarelli:** I might add, incidentally, that I'm often absent from caucus.

**Mr. Gilles Bisson:** Fair enough.

**Hon. Bob Chiarelli:** I'm often absent from caucus for part of a caucus meeting.

**Mr. Gilles Bisson:** Okay, fair enough.

**Hon. Bob Chiarelli:** And it's not an insignificant amount of time, so—

**Mr. Gilles Bisson:** To the point, Minister, just to be clear, this particular committee is charged to look into the issue of contempt and who made decisions that led to the ruling of the Speaker, so that's why I'm asking these questions. Right?

Again, just to be clear, you don't recall there being discussions, but there might have been discussions around this issue at caucus? That's essentially what you're saying?

**Hon. Bob Chiarelli:** If discussions took place, I don't recall them, or if discussions took place, I may not have been in the room.

**Mr. Gilles Bisson:** Were there any discussions that you had with your cabinet colleagues in regard to this particular issue?

**Hon. Bob Chiarelli:** Not in that time frame.

**Mr. Gilles Bisson:** So never at cabinet was there ever a discussion around the release of documents, the non-release of documents, to the estimates committee.

**Hon. Bob Chiarelli:** What time frame are you talking about?

**Mr. Gilles Bisson:** May, June, July, August 2012.

**Hon. Bob Chiarelli:** I can't remember the time frames. I really cannot remember the time frames. There are 15, 20 items on cabinet agendas on an ongoing basis—

**Mr. Gilles Bisson:** I understand. It's busy; I get it.

**Hon. Bob Chiarelli:** —and if I remembered with specificity, I would tell you. I recognize I'm under oath.

**Mr. Gilles Bisson:** I'm not asking for the specifics at this point; I'm just asking, do you recall any discussions in regard to the non-release of documents in cabinet, May, June, July, August 2012?

**Hon. Bob Chiarelli:** I have no recollection of it in that time frame. Again, there are times I'm not at cabinet.

**Mr. Gilles Bisson:** Okay. Did you participate in debate in the Legislature in regard to the contempt motion?

**Hon. Bob Chiarelli:** No.

**Mr. Gilles Bisson:** So you're not one of the cabinet ministers who got up and spoke to that particular issue?

**Hon. Bob Chiarelli:** No, I never spoke to it.

**Mr. Gilles Bisson:** I don't recall. That's why I was asking.

**Hon. Bob Chiarelli:** No, no, I did not speak to it.

**Mr. Gilles Bisson:** Do you want to carry on?

**Mr. Peter Tabuns:** Yes, if you don't mind. Actually, I'd take a different tack.

Minister, how do you communicate policy directions to the Ontario Power Authority?

**Hon. Bob Chiarelli:** By letter.

**Mr. Peter Tabuns:** Can you tell us how many ministerial directives you've issued to the OPA since you've been sworn in?

**Hon. Bob Chiarelli:** There have been a fairly significant number. There were probably between 10 and 12. In fact, I'm very happy to share with you: I actually asked my staff to prepare a chronology of directions to all the agencies, and they're almost—maybe one or two to all the other agencies, and with respect to OPA, there were quite a significant number of directives. Most of them surrounded the renewable programs: procurement, issuing or starting dates for procurements, that type of—so I'm happy to share those with you.

**Mr. Peter Tabuns:** Yes. In fact, if we could take you up on that, I would appreciate receiving a copy, and I think it would be useful for the committee.

**Hon. Bob Chiarelli:** Yes.

**Mr. Peter Tabuns:** What's the threshold for you to give a written direction to the OPA?

**Hon. Bob Chiarelli:** I don't know what you mean by "the threshold."

**Mr. Peter Tabuns:** Well, how minor is an item when you think, "I'll just phone up Colin Andersen," or, "I'll have my staff call Colin Andersen and have him do something," and at what threshold do you say, "You know, this actually requires a written communication"?

0910

**Hon. Bob Chiarelli:** There are specific mandates, legislated mandates, business plans that the agencies have, and to make any change in direction with respect to those, operationally, if it's a significant file, we still act as a government. Somebody could come to us—say, a stakeholder or an environmental group or whatever—and want us to move in a particular direction. If we feel that the direction is correct, we would consider a directive—but you know, in the course of—

**Mr. Peter Tabuns:** Sorry; I apologize. Could you just repeat? If you think that something is significant, a request that has caught your attention, in keeping with where you want to go, how do you communicate that to the OPA?

**Hon. Bob Chiarelli:** There are some things that are really minor, and they don't engage me. There are times when my chief of staff is talking to somebody senior at OPA. We get inquiries from people. We try to get information for them. So there's an ongoing dialogue in that respect.

For example, there are a number of stranded small FIT operators who were given contracts to do a small FIT—mainly solar—and it turned out that there was not transmission available to them. There were claims and requests for rectification etc. So we issued a direction to the OPA to settle with these people in the most agreeable and consensual way possible to create a solution.



**Mr. Peter Tabuns:** What would be the threshold for that? If we're talking \$500, it's something that's communicated verbally. But when you send a written instruction, at what point do you say, "That's big enough that it requires a written direction"?"

**Hon. Bob Chiarelli:** It generally would have to be something that requires to be done. The OPA will ask for directions as well. It's not only us doing it.

**Mr. Peter Tabuns:** Yes, I understand that.

**Hon. Bob Chiarelli:** They will say, "We want to do this, but we need a direction," and we will consider doing a direction for it. There are other times when we will approach the OPA and say, "We feel this should be done. How do you feel about a direction?" So it's not a hammer that we use; virtually always, it's some kind of a consensual direction to move in.

**Mr. Peter Tabuns:** But what I'm trying to get at is: When you want the OPA to do something significant, as opposed to something minor, which would be, "Please send me a report"—when you want them to go in a particular direction or make a substantial investment, you communicate that in writing. Is that correct?

**Hon. Bob Chiarelli:** Yes.

**Mr. Peter Tabuns:** Okay. Have you ever communicated major changes in policy or major changes in investment—changes that could have rate base or tax base implications—without a written directive? You.

**Hon. Bob Chiarelli:** I'm not aware of it.

**Mr. Peter Tabuns:** Is there any circumstance in which you would make a major change without a written directive?

**Hon. Bob Chiarelli:** That I would make a major change?

**Mr. Peter Tabuns:** You.

**Hon. Bob Chiarelli:** You mean through the OPA?

**Mr. Peter Tabuns:** Yes.

**Hon. Bob Chiarelli:** I can't recall any.

**Mr. Peter Tabuns:** Okay. What are the legal risks—

**Hon. Bob Chiarelli:** Sorry?

**Mr. Peter Tabuns:** Sorry if I'm not clear. What are the legal risks in giving directives verbally as opposed to in writing?

**Hon. Bob Chiarelli:** I've never really contemplated that before. We just feel it's appropriate to respect the general protocol in this regard.

**Mr. Peter Tabuns:** Have you ever had the OPA come back and say, "This directive is problematic. We can't implement it," or, "If we implement it, it will harm ratepayers; it will harm the system"?"

**Hon. Bob Chiarelli:** We have discussions with the OPA. We meet with our agency co-chairs and board members occasionally, sometimes collectively, to discuss issues. We respect the mandates of the agencies. We are always cautious about issuing directives because we want to respect the independence. There are multiple, multiple, multiple times when, for policy reasons, stakeholder reasons, environmentalist reasons or environmental groups, that they want us to—I would use the term "interfere" with the process of the OPA, and we decline,

we decline, we decline, we decline because of the independence. There are some circumstances where it is appropriate.

**Mr. Peter Tabuns:** How do you expect the OPA to understand what the wishes of the government are?

**Hon. Bob Chiarelli:** We actually approve business plans for the agencies, and that's an overall direction. We do that on an annual basis, and we provide it to the agencies.

**Mr. Peter Tabuns:** If you wanted them to do something that was novel, that was not in the business plan, how would you expect that to be communicated—

**Hon. Bob Chiarelli:** Well, a prime case is a direction that I issued to the IESO and the OPA to do a consultation and a study looking into the siting of strategic energy infrastructure. They followed through on that direction. They provided a report, which I've tabled, with respect to siting. That was done by direction. It was out of the normal course and it was a change of policy.

**Mr. Peter Tabuns:** For these substantial matters, as a minister, you expect that you will send written direction so that there will be a clear, transparent record of who has directed what and who has acted on that direction. Is that correct?

**Hon. Bob Chiarelli:** That would be the normal procedure.

**Mr. Peter Tabuns:** Have you engaged in abnormal procedures?

**Hon. Bob Chiarelli:** Not to my knowledge.

**Mr. Peter Tabuns:** No, I don't think you have, but I'm asking. So you have followed this, time after time?

**Hon. Bob Chiarelli:** Yes.

**Mr. Peter Tabuns:** I would assume that if the OPA were to make a decision that would have impacts in the hundreds of millions of dollars, they would expect to get from you a signed direction. They wouldn't do it based on a phone call.

**Hon. Bob Chiarelli:** I wouldn't assume that. The OPA makes very serious decisions. They do it independent of us and they're very significant. They don't come to us and ask for direction to do what would normally be in their line of duty. They have disputes of every kind with every kind of energy producer from time to time. Sometimes they resolve them; sometimes they don't.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Hon. Bob Chiarelli:** Sometimes the OPA simply says no, and it means tens of millions of dollars at least for a lot of people.

There's the whole issue now of wind renewables. We have standing contracts there and they've decided, as a matter of policy, that they're not going to do extensions. They didn't come to us and ask; they just decided that for purposes of managing the system properly, they will not do extensions of existing contracts beyond the condition dates.

**Mr. Peter Tabuns:** But when you give them a direction in a matter that affects hundreds of millions of dollars' worth of investment, you do that by phone or through a second party or through someone making a phone call to a staffer at the OPA?



**Hon. Bob Chiarelli:** If we were initiating a large or significant decision of that type, we would do it by direction—

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. I'll pass it to the government side. Mr. Delaney.

**Mr. Bob Delaney:** Thank you. Minister, just before we get on to siting and some of our longer-term issues, was there any other point that you wanted to finish up?

**Hon. Bob Chiarelli:** In terms of the cost associated with relocating Oakville and Mississauga, I wanted to underline that there was tremendous uncertainty from day one, from the time that decisions were made politically—for example, by Mr. Hudak—and I wanted to get on record, not particularly to be negative to Mr. Hudak, but to indicate the level of variance and the level of opinion that existed with respect to the cost of relocating Mississauga and Oakville.

0920

As I was mentioning—and I want to read into the record the whole quote from the mayor of Oakville. It says, “On September 25, 2011, PC leader Tim Hudak says the Oakville power plant cancellation ‘cost \$1 billion’ and suggests the Mississauga power plant cancellation ‘may cost another \$1 billion.’”

“On October 5, 2011”—

**Ms. Lisa MacLeod:** Point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Ms. MacLeod. A point of order.

**Mr. Bob Delaney:** I'm dying to hear this one.

**Ms. Lisa MacLeod:** I'm just wondering, is it the mandate of the committee to explore the role of the leader of Her Majesty's loyal opposition, or is it to explore the gas plant scandal as it pertains to the cancellation of Oakville and Mississauga? I read on the agenda that it's a “review of the matter of the Speaker's finding of a prima facie case of privilege, with respect to the production of documents by the Minister of Energy and the Ontario Power Authority to the Standing Committee on Estimates and to consider and report its observations and recommendations concerning the tendering, planning, commissioning, cancellation and relocation of the Mississauga and Oakville gas plants.”

Again, I don't think the Speaker was ruling on the leader of Her Majesty's loyal opposition, but is looking at the production of documents by the Ministry of Energy and the Ontario Power Authority to the Standing Committee on Estimates.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. MacLeod. Cost issues are relevant.

Mr. Chiarelli, continue.

**Hon. Bob Chiarelli:** Thank you. The quote goes on to say, “On October 5, 2011, on the day before the provincial election, in front of the still-under-construction Mississauga power plant, PC leader Tim Hudak promises to stop the power plant if he wins the election, after only days before warning that he's sure it ‘may cost another \$1 billion’. Later, in 2013, he insists it was irresponsible for then-Premier McGuinty to have cancelled it ‘without knowing what it would cost’, even though it cost far less than Hudak says he thinks it will cost when he himself

promises in 2011 to cancel it. This is a new height”—of blank, blank, blank because it's unparliamentary for me to mention the words that are in the quote. But I want to table this document with the Clerk that has this quote. It has a lot more in terms of the opinion of the mayor of Oakville. That's number one.

Number two, Mr. Delaney, I want to come back to this committee's session—I think it's in the middle of April—at which the CEO of the Ontario Power Authority was giving testimony. Three weeks before, he had provided an estimate of the costs of relocating Oakville. Three weeks later, he comes before committee, and he provides a different, but higher, cost. He also brings with him an expert opinion from one of the most respected energy consulting stakeholders in Canada with, again, a third estimate of what the cost of Oakville would be. At the same meeting, Mr. Fedeli, the critic for the Conservatives, proffered and presented a fourth cost. Of course, the Auditor General had not yet presented her report.

So we have Mr. Hudak's number on two occasions, which he provided before he committed to cancelling the power plants, and then we have these varied opinions. We also have the OPA, on a number of occasions, providing the government with what they described as sunk costs. We also have—and this is very important—the actual contract with TransCanada, which resolved the relocation of that particular facility to Napanee. That document itself, which went online I believe in September 2012—so the contract itself was in September 2012—referred to sunk costs. They identified, I think, it was \$40 million in sunk costs, and then the document itself created an arbitration process, a negotiation process to negotiate a number of heads of damages to try to determine what the costs would be. So even the parties, TransCanada and the government, through the OPA, realized that the costs were not discernible, even up to September 2012. That's the year after the cancellation.

They then went forward, through a process of negotiation, and they came up with the formula. That formula had not even been fully determined—the calculation by the parties who signed the agreement—by the time the Auditor General had presented her report. So we accepted her report, moving forward.

We also accepted—and I want to put it on record; this is very, very significant. This is what the Auditor General said in her report on the Oakville relocation. This is a direct quote: “Making assumptions about future events and their effects involves considerable uncertainty.” Those are the Auditor General's comments. “Accordingly, readers should be cautioned that while our estimates differ from estimates previously announced by the Ontario Power Authority (OPA), they will also likely differ from the actual costs and savings that will be known only in the future.”

So in my opinion, what she's saying is that her report is probably not the final answer on what the number will be. It could be higher or it could be lower.

**Mr. Bob Delaney:** The Auditor General did, however, concur that the sunk costs were, in fact, \$40 million. Correct?



**Hon. Bob Chiarelli:** Sorry?

**Mr. Bob Delaney:** The Auditor General's report on Oakville did concur with the estimate of \$40 million for Oakville's sunk costs.

**Hon. Bob Chiarelli:** She concurred that the sunk costs were the correct numbers that were provided, yes—for sunk costs.

**Mr. Bob Delaney:** So as far back as when Minister Bentley said that the sunk costs were \$40 million, indeed, the sunk costs were \$40 million.

**Hon. Bob Chiarelli:** That's correct.

**Mr. Bob Delaney:** And my reading of the Auditor General's report—correct me if I'm wrong—was that these other costs will be determined over the 20-year span of the life of the plant.

**Hon. Bob Chiarelli:** Yes. And I think it's important to realize that when they talk about the rate base—and they talk about the \$950 million that was the resulting cost from relocating Mississauga and Oakville, which incidentally satisfied, in a democratic way, the people of Oakville and Mississauga and satisfied the people in the Sarnia area, Sarnia-Lambton, and Napanee. So we had two happy constituencies.

But the actual costs, through the whole process at this committee, through the process before the committee, when you look at Mr. Hudak's comments, were uncertain. But the decision was made. Certainly the Conservative Party was very adamant that they would cancel and relocate, with their leader knowing that it could be as high as \$1 billion. He said the same thing for both plants.

From my perspective, we have admitted that the siting for those two was incorrect. That's why, as I indicated—and I provided a document to indicate the extent that we have gone to to correct the siting issues. We have properly sited 21 gas plants at this point; 19 of them are operational as we move forward.

The issue has been unfortunate. It has been uncertain for the opposition as well as the government in terms of their prognostications as to what the costs would be. We now know them from the Auditor General's report. We've accepted the Auditor General's report, and we're moving forward with new siting rules.

**Mr. Bob Delaney:** Okay. Ben Chin, when he was before the committee, was talking about the process of cancelling both of those gas plants. What he pointed out is that in 2010 they realized that the electricity that would have been produced from both plants was, in fact, no longer needed, thus it wouldn't have made much sense to have constructed plants whose output wasn't needed in an area, when reasonably, six years ago, the government felt it was needed.

0930

**Hon. Bob Chiarelli:** Well, it's similar to the issue that has been raised with respect to the relocation of the Oakville plant: "Why did it go to Napanee? Why didn't you put it in Kitchener-Waterloo?"—because Kitchener-Waterloo had been a proposed site. That is because their energy demand had changed and they didn't need it in Kitchener-Waterloo. They looked at a number of various sites, as the OPA would normally do.

**Mr. Bob Delaney:** This is normal, historically, that the government or, in the past, Ontario Hydro, with the best information they had at the time, would make a power forecast, and the power forecast would vary depending on growth patterns and power consumption. An estimate made at some point in the past wouldn't come to fruition, and Ontario Hydro—or now, the OPA—would adjust its projections and adjust its capital build accordingly. Correct?

**Hon. Bob Chiarelli:** One of the realities of the energy sector is that there is a changing demand dynamic. It comes from the fact that the economy is changing. It's changing in a way that our employment and the new jobs that are being created across the province are not highly energy-efficient. We're talking about the 10,000, plus or minus, that were created by Research in Motion, the high-tech communities in Markham and around the GTA and in the Ottawa region. We just saw the numbers for movie production in Toronto, and I think that for the year it was over \$2 billion and thousands of jobs created in the movie industry. Those are not high-energy-intensive jobs, so the demand situation changes. It changed in Kitchener-Waterloo, probably because of that very factor. The jobs that were being created there were in high-tech. They were in technology. They were not in traditional manufacturing.

I might add that it's quite similar when we look at new nuclear. New nuclear was part of the 2010 long-term energy plan, and it's being deferred in the current long-term energy plan because the demand is not there and we have a surplus of supply. We're not going to push rates up by investing \$15 billion in energy that's not required and which we can deal with without that type of investment. So there is changing demand. What was once thought as needed in terms of electricity supply is not needed, and so it's shifting sands.

**Mr. Bob Delaney:** One of our constituents in western Mississauga is Whirlpool, which manufactures appliances for everybody. If you buy an Amana, a Hotpoint, a Sears, it's made by Whirlpool. A point that this company makes is that their current generation of appliances are not only capable of reading the price off the grid, but they're far, far more energy-efficient than they were only a few years ago. Part of the reason that Whirlpool continues to be as successful as they are in Canada has been that they've learned to adapt to producing machines for homes that operate on a lot less electricity. That gives rise to a lower demand from the residential sector. Let's go into—

**Mr. Rob E. Milligan:** On a point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Point of order, Mr. Wilson—or Mr. Milligan, sorry.

**Mr. Rob E. Milligan:** That's okay, Chair. Just a point of order: Isn't Whirlpool actually closing down due to high energy costs? That's what I heard.

**Mr. Bob Delaney:** You are quite incorrect.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Milligan. Mr. Delaney, please continue.

**Mr. Bob Delaney:** Let's go back to—the reason that I raised that is that one of the people who came before us



was Adam White, who is the president of the Association of Major Power Consumers in Ontario. He told this committee that the members of his organization support the government's recent efforts to move in the direction of more regional planning with more local involvement, and acknowledged that Ontario's electricity system is a very, very complex beast that operates on multiple levels—not merely a high-voltage grid that serves the province overall, but also a system in which local distribution companies step down the electricity and provide it to consumers.

Arising out of this, we have some recommendations from the Independent Electricity System Operator and the Ontario Power Authority that I think are going to affect the province's new approach to energy planning. That actually is one of the things this committee is here to talk about.

Could you talk to me a little bit about how some of the—

**Mr. Rob E. Milligan:** On a point of order, Chair.

**The Chair (Mr. Shafiq Qaadri):** Mr. Milligan, point of order.

**Mr. Rob E. Milligan:** How is Whirlpool relevant to the committee's mandate?

**The Chair (Mr. Shafiq Qaadri):** Mr. Milligan, whirlpools are usually hot. Heat is energy. I presume that's the connection.

Please continue.

**Mr. Bob Delaney:** And the question that I'm asking, Chair, is how the thinking reflected in the Independent Electricity System Operator and the OPA's report, if the opposition members would just listen to the question, is changing the province's approach to energy planning. Minister?

**Hon. Bob Chiarelli:** As I indicated, the demand is not going the way it used to for a number of reasons. Number one, the system is much more efficient, and people have more tools to reduce their demand permanently and in the long term. For example, the poster child for this is Loblaws. Loblaws has a demand response contract with the IESO, where they agree to turn down their electricity requirements at specified times, which are peak times. In the peak times, when you have a heat wave in the summer, for example, you're using the most expensive electricity. So there's a system now in operation in Ontario, which we're going to grow, for demand response, where industry and commercial leaders sign contracts to reduce on demand.

Loblaws, consequently, has been able to permanently reduce their consumption of electricity by up to 20%. That exists for automobile manufacturing facilities, large manufacturing facilities. Quite frankly, I can give you a scoop on the long-term energy plan: Conservation and demand response are going to be a much, much higher priority for the sector. We've had significant success. We've analyzed what's been able to be accomplished by other jurisdictions. Indeed, one jurisdiction, the US states around New Jersey—there are three or four of them—has a system operator. Using demand response, using busi-

nesses turning down their demand at specified times, they have reduced their permanent requirement for capacity by 10,000 megawatts.

That is very significant. That's the future. We have the information technology and the algorithms now that can enable this to be done with large numbers of consumers. That's the future of electricity.

The other significant factor in reducing demand is, as I mentioned, the changing nature of our economy. There is less manufacturing, that is true. There is more efficient manufacturing, that is true. They're using demand response. But the jobs we're creating are smart jobs. They're in the technology sector, in research and in development. Again, unfortunately, BlackBerry has had some problems, but if you look at the job creation, 2,000 jobs were created in Ottawa through smart technology. They're not highly energy-intensive, so we're taking those things into account in our new long-term energy plan.

**Mr. Bob Delaney:** Chair, how are we doing on time?

**The Chair (Mr. Shafiq Qaadri):** About 90 seconds or so.

**Mr. Bob Delaney:** About 90 seconds or so? Okay. Well, just in that last 90 seconds, Minister, I just heard a few cheap shots about a firm in my riding that I'm very proud of. For the benefit of the committee, Whirlpool Canada's annual sales approached \$1 billion in 2012—and this is obviously a firm that the opposition would like to chase out of the province. They're headquartered in Mississauga. They supply consumer brands for Whirlpool, Maytag, KitchenAid, Jenn-Air, Amana and Inglis, and they have been Canadian for more than two decades.

Minister, thank you very much for your time.

**Mr. Rob E. Milligan:** On a point of order, Mr. Chair.

**The Chair (Mr. Shafiq Qaadri):** Mr. Milligan.

**Mr. Rob E. Milligan:** Again, what does Whirlpool or Maytag have to do with the mandate of this committee? It's not relevant to the gas plants.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Milligan.

Mr. Delaney, you have 30 seconds left; I'd invite you to use it efficiently.

**Mr. Bob Delaney:** All right. If we're talking about our demand for residential electricity, where a lot of that demand is driven by energy-intensive appliances, such as your washing machine, your dryer, your stove, your fridge and your dishwasher—they're called the big five. And if a firm in my riding is one of the world's leading manufacturers of energy-efficient devices—those things drive down the demand for electricity in the residential sector. That means that what the minister is talking about in terms of lower demand and its impact on generation is very relevant.

0940

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. To the Conservative side: Ms. MacLeod.

**Ms. Lisa MacLeod:** Thanks very much, Chair. I'll be brief. I just wanted to correct the record. I just wanted to say one thing and then my colleague from Huron—Bruce



will be speaking. Just a point to Mr. Delaney and Mr. Chiarelli: Destroying manufacturing in Ontario is not a viable solution to conservation, just so we are aware that you're on the wrong path.

In any event, Minister, you mentioned a statement that was provided by the mayor of Oakville, but there were stipulations in the agreement between the OPA and TCE that could have dissolved all of the costs on behalf of the OPA. I want to put on record that it is of your government's complete lack of due diligence and your government's complete indecision and inability—your government's decision to make TCE whole—that you ignored the force majeure that would have enabled the OPA to move away, cost-free, from this deal that has now strapped the people of Ontario with \$1.1 billion for your seat-saver program. I wanted to put that on the record.

My colleague Lisa Thompson will now take up the questioning.

**The Chair (Mr. Shafiq Qaadri):** Ms. Thompson.

**Ms. Lisa M. Thompson:** Thank you very much, Chair. Thanks for being here, Minister. I want to go back to the time that you shared with my colleague from Nepean—Carleton. Right out of the gate we asked you what your opinion of the AG report was, and it was a yes-or-no context. What is your opinion? Do you agree with the AG or do you not?

**Hon. Bob Chiarelli:** I agree with the AG. I especially agree with the AG when—I read the quote and I'll read it again; this is right out of the report: "Making assumptions about future events and their effects involves considerable uncertainty. Accordingly, readers should be cautioned that while our estimates differ from estimates previously announced by the OPA, they will also likely differ from the actual costs and savings that will be known only in the future." Thank you.

**Ms. Lisa M. Thompson:** Okay. Interesting. The OPA estimate for this whole fiasco was \$310 million. The AG estimate was between \$675 million and \$1.1 billion. Which one are you more inclined to accept, Minister?

**Hon. Bob Chiarelli:** I'm not going to speculate on that, quite frankly. There are two numbers that are there. We've accepted her report and we have moved forward to have better siting policies. I want to repeat that we have sited 21 gas plants in Ontario. Two of them were improperly sited. We had two unhappy communities who became happy because they were relocated.

I can tell you that MPP Bailey smiles all the time in the Legislature, and he smiles particularly—

**Ms. Lisa M. Thompson:** Okay. Yes, we know he's happy.

**Hon. Bob Chiarelli:** —when we mention that it's been relocated to his community because it created jobs in his community.

**Ms. Lisa M. Thompson:** Yes, he's a happy guy.

**Hon. Bob Chiarelli:** And it was unanimous consent by the Napanee council when we agreed to relocate it. So we have four constituencies that are very happy with the decisions we've made.

**Ms. Lisa M. Thompson:** Just a brief comment, a sidebar—you brought it up. Given that you're really pleased that you've made communities happy, you'd better start listening to 75 unwilling, unhappy communities. You know what I'm talking about.

You went to siting, so let's talk about that a little bit. You said, right from the beginning, that you want to get siting right the first time. Mr. Andersen was here a few weeks ago saying that they identified four preferred sites, over and above Napanee. So who got it right? Mr. Andersen or your Liberal government?

**Hon. Bob Chiarelli:** Do you have the quote from Mr. Andersen that I can see?

**Ms. Lisa M. Thompson:** We can find it, but I'm sure Mr. Delaney and our colleagues in the third party—

*Interjection.*

**Ms. Lisa M. Thompson:** Yes, it's a fact. He specifically said that they preferred four sites over Napanee. To your point, you wanted to get it right—

**Hon. Bob Chiarelli:** Did he include Kitchener—Waterloo in that?

**Ms. Lisa M. Thompson:** Yes, he did, actually.

**Hon. Bob Chiarelli:** Well, the fact of the matter is—and the record will show—that the energy was not required; the demand was not there in Kitchener—Waterloo.

**Ms. Lisa M. Thompson:** Because the manufacturing base had fallen off?

**Hon. Bob Chiarelli:** Sorry?

**Ms. Lisa M. Thompson:** Because the Liberal Party had driven manufacturing away from Kitchener—Waterloo? No answer is an answer, so you agree with that.

**Hon. Bob Chiarelli:** You know, I haven't seen his remarks, and I'm not going to comment on them.

**Ms. Lisa M. Thompson:** Okay. Siting: What is your criteria in proper siting?

**Hon. Bob Chiarelli:** The criteria for proper siting is to have very, very—first of all, the procurement is very important; the nature of the procurement, firstly. Secondly, we're changing how the energy sector operates, in that we want to put a lot of focus on regional planning, and we are incenting municipalities. We're providing funding for municipalities to create their own energy plans. Municipalities have official plans to project growth. They have solid waste plans. They have master transportation plans. They do not have energy plans, and it's very important that we change the planning mechanisms in the province so that there's regional planning and that that regional planning connects directly to the municipalities.

**Ms. Lisa M. Thompson:** Okay. Let's talk about that for a second. Let's talk about regional planning. Is this regional planning for energy a long-term vision?

**Hon. Bob Chiarelli:** Well, it's going to be transformational and transitional. It's to get it as quickly as possible.

**Ms. Lisa M. Thompson:** Okay. And do you see it linking in with the directions of your long-term energy plan?

**Hon. Bob Chiarelli:** Yes.

**Ms. Lisa M. Thompson:** Okay. Then I have an absolute disconnect. You're quoted as saying this past week



that your long-term energy plan is to satisfy needs in the short term. With all due respect, Minister, what the heck was that about?

**Hon. Bob Chiarelli:** In all due respect, you've got it absolutely, totally, 100% wrong.

**Ms. Lisa M. Thompson:** That's the quote. That was quoted in the Toronto Star.

*Interjection.*

**Ms. Lisa M. Thompson:** So it's—

**Hon. Bob Chiarelli:** Are you interested in knowing what I said?

**Ms. Lisa M. Thompson:** I was just quoting the Toronto Star.

**Hon. Bob Chiarelli:** Are you interested in knowing what I said?

**Ms. Lisa M. Thompson:** I'm interested in how you're going to spin it.

**Hon. Bob Chiarelli:** We also said, because the demand is coming down so quickly, we're changing our decision-making process with respect to new energy projects. The Independent Electricity System Operator will be preparing an annual report indicating the supply and demand dynamics, and we will be able to adjust accordingly.

The worst thing we can do is overbuild the sector. By overbuilding the sector, that means we're putting costs on the ratepayers unnecessarily, so in—

**Ms. Lisa M. Thompson:** Isn't that exactly what you're doing—

**Hon. Bob Chiarelli:** Can I finish talking?

**Ms. Lisa M. Thompson:** —with your green energy plan?

**Hon. Bob Chiarelli:** Can I finish talking? You're interrupting me.

**Ms. Lisa M. Thompson:** Isn't that exactly what you're doing right now?

**Hon. Bob Chiarelli:** You're interrupting me.

**Ms. Lisa M. Thompson:** Shame on you.

**Hon. Bob Chiarelli:** You're interrupting me. Shame on you. You're interrupting me.

**The Chair (Mr. Shafiq Qaadri):** Colleagues.

**Hon. Bob Chiarelli:** You're interrupting me.

**Ms. Lisa M. Thompson:** You're talking out of both sides.

**Hon. Bob Chiarelli:** No, no.

**Ms. Lisa M. Thompson:** Carry on.

**Hon. Bob Chiarelli:** I'm sorry that you can't understand.

**Ms. Lisa M. Thompson:** Oh, yes, I well understand.

**Hon. Bob Chiarelli:** You can't understand the complex energy system and—

**Ms. Lisa M. Thompson:** I well understand, Minister.

**Hon. Bob Chiarelli:** You can understand that we should not be building \$15 billion of new nuclear when we don't need it. You want to put \$15 billion—

**Ms. Lisa M. Thompson:** We're not talking about nuclear right now; we're talking about siting.

**Hon. Bob Chiarelli:** Your party wants to put \$15 billion on the rate base—

**Ms. Lisa M. Thompson:** You went to nuclear. I well understand nuclear.

**Hon. Bob Chiarelli:** You want to put \$15 billion on the rate base—

**Ms. Lisa M. Thompson:** We're not talking about that today; we're talking about siting.

**Hon. Bob Chiarelli:** —and push costs up for consumers when it's not needed.

**Ms. Lisa M. Thompson:** Point of order.

**The Chair (Mr. Shafiq Qaadri):** Ms. Thompson, you have the floor. You don't need a point of order.

**Ms. Lisa M. Thompson:** Yes, okay. Chair, can you direct the witness back to the topic at hand, and that's siting?

**The Chair (Mr. Shafiq Qaadri):** Witness, would you please return to the topic at hand?

Please, go ahead, Ms. Thompson.

*Interjections.*

**The Chair (Mr. Shafiq Qaadri):** Please, colleagues.

**Ms. Lisa M. Thompson:** Okay. Let's talk about your siting criteria; let's go back to that. It's interesting, because clearly what's good on one hand is not clearly good on the other. So let's keep talking about siting. What are your other siting criteria?

**Hon. Bob Chiarelli:** The other siting criteria?

**Ms. Lisa M. Thompson:** Yes.

**Hon. Bob Chiarelli:** The siting criteria will be based on where the need is, where transmission is. You don't want to build new generation where there's no transmission. It's a complex—

**Ms. Lisa M. Thompson:** Then why are you putting turbines where there's no generation?

**Mr. Bob Delaney:** On a point of order, Chair: We have previously ruled on this particular topic.

**The Chair (Mr. Shafiq Qaadri):** Thank you.

**Hon. Bob Chiarelli:** What I want to know—

**The Chair (Mr. Shafiq Qaadri):** One minute left. I would invite you to allow the witness to just complete his phrase.

**Hon. Bob Chiarelli:** What I want to know is for existing wind contracts, will you—will a Tim Hudak government cancel those contracts?

**Ms. Lisa M. Thompson:** We're talking about siting right now, and you were saying that you want—

**Hon. Bob Chiarelli:** No. I'm saying, will Tim Hudak—

**Ms. Lisa M. Thompson:** —part of your criteria for energy generation—

**Hon. Bob Chiarelli:** Will a Tim Hudak government cancel—

**Ms. Lisa M. Thompson:** I'm asking the questions, with all due respect. We're talking about siting.

**Mr. Bob Delaney:** Chair, on a point of order: We have had this discussion in the past, and we have decided that the siting and location of wind turbines is outside the committee's mandate.

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**Ms. Lisa M. Thompson:** We're talking about—

**The Chair (Mr. Shafiq Qaadri):** Ms. Thompson, that is a valid point of order. As you just invited the witness

to return to topic, I will do the same to you. Wind energy is not part of the deliberations of this committee. You have 42 seconds.

**Ms. Lisa M. Thompson:** Okay. With that said, though, you're talking specifically about siting close to generation and distribution. So there's a lot of distribution that is not near your preferred locations for gas plants. How much is it going to cost to connect Napanee to where the demand for energy really is, in the GTA? Do you know that answer?

**Hon. Bob Chiarelli:** Well, I'm just going to defer to the Auditor General's report. She explored that. She spoke about it. We're accepting the Auditor General's report.

**Ms. Lisa M. Thompson:** So you're saying that the \$1.1-billion tag is probably the correct number on the books?

**Hon. Bob Chiarelli:** No, I'm not saying that. She gave a range, and I'm accepting her report, which includes a range.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Thompson. Just before I offer the floor to the NDP, I would just observe that I think we can leave most of the antics to city hall, where they belong. I would appreciate if we would all observe parliamentary decorum.

To the NDP side: Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Chair. Minister, I listened to your back-and-forth with Mr. Delaney with some interest. You noted that demand response is the future. You noted that overbuilding puts huge burdens on the sector. You noted that the power from the Oakville plant, if it had been built on your timetable, would have been surplus to the province's needs. Do you remember that the NDP raised precisely these points before your government signed the contract? Do you recognize that you, warned by us and warned by the community that the plant was unnecessary and in the wrong place, went ahead and did it anyway?

**Hon. Bob Chiarelli:** I can't recall that. Thank you for reminding us.

**Mr. Peter Tabuns:** Well, then I suggest you check Hansard. I suggest you check Hansard.

Why do you think the Premier's office and your predecessor did not put in writing to the OPA instructions for the cancellation of the Oakville plant? You've been very clear about the necessity of writing things down, giving clear written instruction, leaving a trail.

**Hon. Bob Chiarelli:** I can't answer for people who have been here as witnesses, some of them twice. I simply defer to the answers they provided when they were here themselves. I'm not going to speculate on that.

**Mr. Peter Tabuns:** Would you have done it?

**Hon. Bob Chiarelli:** I'm not going to speculate on that.

**Mr. Peter Tabuns:** Would you expect the OPA to follow informal requests of this magnitude from your office?

**Hon. Bob Chiarelli:** I would expect the OPA to work professionally, as they generally do. When a direction is required, they ask for direction.

**Mr. Peter Tabuns:** I gather they did ask for direction and were never able to get it.

**Hon. Bob Chiarelli:** I'm not aware of that.

**Mr. Peter Tabuns:** Fair enough. Mr. Bisson.

**Mr. Gilles Bisson:** Just to be clear, there was a request made by the estimates committee for documents back in May 2012. In our previous round of questioning, we were talking about what your knowledge was in regard to that particular request. I just want to get back to that. We've had a number of cabinet ministers who have come before this committee who have said that, in fact, there were discussions at cabinet in regard to the requests by the committee. Are you aware of any of those?

**Hon. Bob Chiarelli:** I can't recall. I can't recall the time frames. I know that as the procedures in committee progressed, the number of discussions or whatever became somewhat more numerous, but not terribly numerous. It's the time frames that I have trouble—you're focusing on May 2012, and I can't recall that.

**Mr. Gilles Bisson:** Fair enough. If you asked me exactly what happened at a caucus meeting a year ago, I would probably be a bit fuzzy. But I would at least remember that there was a discussion. I think what I just heard you say was that yes, there was some discussion at cabinet in regard to the request by the committee; you're not aware of the time frame. That's what you're saying, just to be clear?

**Hon. Bob Chiarelli:** Yes.

**Mr. Gilles Bisson:** Okay, the time frame you're not clear on. So, okay, we've established there were some discussions at cabinet in regard to the request by the committee. Do you remember any of the details around those discussions or any of the facts?

**Hon. Bob Chiarelli:** No. I mentioned that I can recall, in dealing with the issue, the sunk costs that were provided by the OPA. That's the extent of my recollection. I can't remember—

**Mr. Gilles Bisson:** And that's important, but that's not the reason for this question. I just want to stay on the requests by the estimates committee. So you don't remember any discussion—you know that there were some discussions at cabinet in regard to the request by the committee. For the record, what you have said is you don't remember any of the details.

**Hon. Bob Chiarelli:** That's right.

**Mr. Gilles Bisson:** You said there were some discussions—is what you just said—and the frequency of those discussions increased somewhat as things progressed. Do you have any sense of the timeline of that?

**Hon. Bob Chiarelli:** Probably towards the end of 2012, early 2013. That would be my guess. My best recollection, obviously—

**Mr. Gilles Bisson:** On the request from the committee, now. I'm not talking about sunk costs. I'm not talking about relocations of gas—

**Hon. Bob Chiarelli:** Well, I don't know—



**Mr. Gilles Bisson:** No, no. But I just want you to be clear. We're not confusing two things. With all due respect, Minister—

**Hon. Bob Chiarelli:** No, no. What I want to say is, there were a number of requests, and the requests kept changing or going into new areas or whatever, including into my time as Minister of Energy. I can—

**Mr. Gilles Bisson:** All of this would have happened before you were Minister of Energy.

**Hon. Bob Chiarelli:** No, no. I appreciate that. That's why I don't retain all the details of everybody else's ministry when they come to cabinet—

**Mr. Gilles Bisson:** Listen—and that's fair. If you said to me, "What was talked about at caucus a year and a half ago?"—I know there was a discussion; I may be fuzzy on the details. I get that. I understand that we're human.

My point was, there was a request by the estimates committee for documents, and that request was refused. Then there were subsequent things that happened later that led up to a *prima facie* case of contempt being found. So what we've established and the fact there were some discussions at cabinet—you don't remember exactly what they were about. You don't remember any of the details of those discussions? Do you remember any of the discussions? Did you have any casual conversations with any of your cabinet colleagues outside of cabinet about this issue?

**Hon. Bob Chiarelli:** You're talking the time frame of May 2012? No.

**Mr. Gilles Bisson:** So May 2012, up to the ruling of the *prima facie* case of contempt: Do you remember any discussion? Just to be clear, in May 2012, there was a request by the estimates committee. Then there was a finding of a *prima facie* case by the Speaker. Then there was a debate in the House, and then there was a vote in the House. I'm talking about at the end of that vote; did you have any casual discussions with your colleagues around the request by the committee for documents?

**Hon. Bob Chiarelli:** I really can't recall. I would imagine that just general—you know, you're walking out of caucus and you're talking to somebody. We have casual discussions on all kinds of things. It's hard to remember—

**Mr. Gilles Bisson:** Did anything strike you as being particularly odd about what was going on in that period in regard to—so the request by the committee was made for documents, and the documents were not released readily; they weren't given right away. Only after the government was found to be in contempt—or the government, in order to try to prevent itself from being found in contempt, released those documents. So it took, what, three months before the documents actually started to be released.

My question is, do you remember any details in regard to the decision-making around not releasing those documents? Do you remember anything?

**Hon. Bob Chiarelli:** I don't recall any cabinet discussion about not releasing those documents. My recollection is—

**Mr. Gilles Bisson:** Hang on, hang on.

**Hon. Bob Chiarelli:** It may have happened, but I don't recall it. What I do recall is that somewhere around the contempt motion—I don't know what the date of that is, even—there were discussions, but I don't remember the details.

**Mr. Gilles Bisson:** Okay, so you were not one of the principal people in strategizing around the committee's request?

**Hon. Bob Chiarelli:** Absolutely not. I was totally out of the loop.

**Mr. Gilles Bisson:** So we know that the Premier was, right?

**Hon. Bob Chiarelli:** Well, I don't know that. I don't know what the Premier—the Premier was here twice. You had the opportunity to ask him. I can't answer for him. He was here to answer for himself.

**Mr. Gilles Bisson:** Okay. No, but you had said earlier in your testimony that it was the Premier who took the lead on this. That's what you said at the beginning today. So are you saying different now?

**Hon. Bob Chiarelli:** The Premier's office, which presumably—

**Mr. Gilles Bisson:** Okay, all right. Because I find it hard to believe that nobody was strategizing on how not to release those documents. That's just totally implausible. Would you not agree?

**Hon. Bob Chiarelli:** If they were, I wasn't in the loop.

**Mr. Gilles Bisson:** Okay. But you know that there were some discussions; you just don't remember the details.

I'm going back to the previous question. Were there any of those types of discussions at caucus, reporting back to caucus about that issue?

**Hon. Bob Chiarelli:** My answer is the same as I gave you previously.

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**Mr. Gilles Bisson:** So you don't remember. Okay.

**Hon. Bob Chiarelli:** I may not have been there. I missed maybe 35% or 40% of caucuses, either by not being there half the time or—

**Mr. Gilles Bisson:** Okay. Let me get to something else now.

**The Chair (Mr. Shafiq Qadri):** One minute.

**Mr. Gilles Bisson:** One minute, you said? Well, I'll try this in one minute.

In regard to the deletion of documents, there were deleted emails on the part of others. I know you've already, I think, put on the record that in your time, you've actually not done that. Right?

**Hon. Bob Chiarelli:** That's right.

**Mr. Gilles Bisson:** Were there any discussions at cabinet in regard to the deletion of emails from May to September 2012? Were there any discussions in cabinet about the deletion of emails?

**Hon. Bob Chiarelli:** Through what period of time?

**Mr. Gilles Bisson:** May 2012 to about October 2012.



**Hon. Bob Chiarelli:** I don't recall it before then. I recall some subsequent to that.

**Mr. Gilles Bisson:** Do you remember any discussion within government about the need to delete emails in that time period?

**Hon. Bob Chiarelli:** No.

**Mr. Gilles Bisson:** Okay.

**Mr. Peter Tabuns:** You recollect some discussion of the deletion of emails subsequently, you've just said. Can you enlarge on that, please?

**Hon. Bob Chiarelli:** There was some very considerable concern in cabinet, not particularly about emails but documents generally, which may have included emails—

**The Chair (Mr. Shafiq Qaadri):** Thank you, colleagues. To the government side. Mr. Del Duca.

**Mr. Steven Del Duca:** Thanks very much, Mr. Chair. Good morning, Minister.

I wanted to spend a couple of minutes talking about steps that the government has taken with respect to improving the siting process for energy infrastructure. The government recently announced that small and medium-sized municipalities will be eligible for funding for municipal energy plans which align infrastructure, energy and land use planning. These plans will focus on increasing conservation and helping to identify the best energy infrastructure options for a community.

I know that you are obviously a former mayor and a former regional chair, and at various points in your career you were probably on the other side of the table or the other side of the equation. I'm just wondering, how has your previous experience fed into the creation of these new processes or your thinking behind the creation of these new processes? Also, how will these moves provide a tangible benefit for communities that receive the funding?

**Hon. Bob Chiarelli:** First of all, I want to say that over a period of nine years I was the elected regional chair and mayor of the city of Ottawa, the second-largest city in the province. Obviously, as most reasonably large cities would do, they have very fulsome and comprehensive planning processes.

Looking at it retroactively, I would say that one big black hole in all the good planning that we did with the official plans and master transportation plans and solid waste plans etc. is that we really never had an energy plan. When we look at an official plan, we project employment growth and we project population growth and—are you smiling or laughing at something? You're not interested in this information?

**The Chair (Mr. Shafiq Qaadri):** Mr. Chiarelli, smiles are also parliamentary. Please continue.

**Mr. Steven Del Duca:** I think, Chair, though, if I could say, on a point of order, with the greatest respect: The folks on this side of the table tried to listen respectfully to the questions coming from opposition members and I would ask that they would do the same.

**The Chair (Mr. Shafiq Qaadri):** I will accept that. I would echo the comments of my colleagues and the

minister and the witness. He is entitled to due respect and at least a modicum of silence for his remarks.

**Ms. Lisa M. Thompson:** I didn't say a word.

**The Chair (Mr. Shafiq Qaadri):** Actually, I don't need you to apologize right now. I'd just invite you to observe parliamentary decorum.

Mr. Chiarelli.

**Hon. Bob Chiarelli:** As I was saying, the planning for municipalities has been excellent except that there have not normally been energy plans. Even though we're planning for more economic growth and multiple new subdivisions and we're extending urban boundaries, we don't have a plan to deal with the energy that's required for that.

So one of the priorities for the IESO and the OPA new planning regimen is to significantly enhance regional provincial planning, such as southwestern Ontario or eastern Ontario or the GTA, and to make sure that there are also energy plans at the municipal level. That's certainly very relevant for siting and it's very relevant for the development community to know where energy is going to be available. It's important that we connect those two dots, the planning in a municipality and the energy planning. We are focusing a lot on that.

We are also, for small and medium-sized municipalities, providing funding for them to be able to create their own energy plans. They will have to address the issue as to what they need in terms of electricity in the future to satisfy their new subdivisions, new industry and economic development and where, in fact, that will come from. Will they try to have it in renewables? Do they want to do it all on transmission? If they don't want to have any new generation sited in their community, then where will the transmission go? Sometimes big transmission going through a community is more disruptive than a single gas plant, for example, so it's very important that individual municipalities think this through and actually have a plan.

**Mr. Steven Del Duca:** Thanks very much for that answer. You mentioned the proposals, the plan or the recommendations put forward by the OPA and the IESO. Regarding that element in particular, with respect specifically to the consultations that were undertaken over the last number of months as part of that process and as part of the long-term energy plan process, specifically in the case of the long-term energy plan: If I understand it correctly, the government consulted somewhere in the neighbourhood of a dozen communities and received over 2,000 written responses. I'm just wondering if you can tell us if you were involved in any of those consultations that were undertaken as part of that process and, if you were, what you might have heard or what your staff might have heard.

**Hon. Bob Chiarelli:** Yes. What we heard was that they wanted more conservation; that's number one. A significant number of them referred to the siting issues, and they wanted to have a siting regimen moving forward. The siting regimen, actually—you know, I have several quotes here from people who came before the



committee here with respect to siting, including the Auditor General, and I'll get to her in a minute.

David Butters, who is the president of the Association of Power Producers of Ontario: "I thought that the work that the Ontario Power Authority and the IESO did over the course of the summer on the consultation on siting recommendations was worthwhile and valuable... the recommendations ... were very sensible, thoughtful."

Again, Mr. Butters: "I think we've done a good job"—on siting—"in 98% of the cases."

So, we have improvements to make, and we're going to ensure that we close the loop on those areas where we need to improve. But as I mentioned earlier in my remarks, a lot of people are not aware of the fact that we've approved—and actually have in operation now—19 gas plants across the province. This government—they're not previous governments', and there are two that have been sited now that are not built. Those are the two that are being relocated.

We have to do better in terms of making sure that we don't repeat the Oakville and Mississauga experiences—and they were different experiences, incidentally—when we move forward.

**Mr. Steven Del Duca:** Thank you for that. Those of us who have been on this committee from the very beginning would know that part of our work is to try to develop recommendations on this whole topic area of improving the way that we site energy infrastructure. We've had somewhere in the neighbourhood of 70 witnesses come before committee since we began this process, many of whom did provide, I think, fairly valuable feedback to the committee members—and advice, as well as feedback—regarding how we can improve the siting process.

The main feedback that we heard from members of both the communities of Mississauga and Oakville is that there should have been a better consultation, or a more robust consultation process with local residents from the very beginning of the process. Again, as a former municipal politician, as a leader of your municipality, both at the regional and local level, what role do you think engaging with the local communities should play in order to better support the energy infrastructure siting process?

**Hon. Bob Chiarelli:** It should be a priority consideration. It will be a priority consideration. Whether there's large strategic infrastructure such as a gas plant or whether it's going to be renewable energy, there will be an absolute requirement to have very significant engagement with the local community or communities that might be involved in the siting, particularly with respect to renewables. It will be virtually impossible for a wind turbine, for example, or a wind project, to go into a community without some significant level of engagement.

The actual procurement will require a precondition for the proponents that they will have engaged the municipality, and they have to bring to the table the level of engagement that they've been able to achieve with the municipality. It will be almost impossible for somebody to win one of those bidding processes without an engagement with the municipality. It does not provide an absolute veto, because an absolute veto could be an impediment to regional planning, so that would have to be dealt with, but it would be very rare indeed.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca, and thank you, Minister Chiarelli, for your presence and endurance. You are respectfully dismissed. The floor goes to Mr. Bisson, who will finish committee business, after which we have a subcommittee meeting.

**Mr. Gilles Bisson:** I just want to draw your attention, Chair and the committee, to the November 8 letter from William Bromm, legal counsel for the cabinet office. If you recall, our caucus had made a request; I'm not going to read the whole thing, but it was a request made in relation to the request—we wanted to have any cabinet documents and P and P documents related to the request by the standing committee for the documents that had been refused.

If you read down to the bottom, in the last paragraph, the response we get—they say etc., etc. "related to the cancellation and relocation" of the power plants. I want some clarification here because what this letter is essentially saying is that they've given us everything about the cancellation and relocation of the power plants—fair enough—but that's not what I asked for. I asked: Were there any cabinet minutes or cabinet documents or P and P documents related to the discussion around the request by the committee for documents? It seems to me that my request has not been fulfilled. Can someone please respond?

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Bisson. I would suggest that perhaps you might just want to confer with research and preferably clarify exactly what you assume was given and what you're requesting so that we can mesh the two.

**Mr. Gilles Bisson:** I will, but I just wanted, for the record today, to say that I feel that our request has not been fulfilled.

**The Chair (Mr. Shafiq Qaadri):** I think it's a level of subtle detail that is beyond the committee's capability at this time.

**Mr. Gilles Bisson:** Fair enough. Well, it's not subtle detail—

**The Chair (Mr. Shafiq Qaadri):** Any other further business before this committee? Seeing none, we're now in subcommittee. Thank you.

*The committee adjourned at 1013.*

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Deuxième session, 40<sup>e</sup> législature

# Official Report of Debates (Hansard)

Tuesday 26 November 2013

# Journal des débats (Hansard)

Mardi 26 novembre 2013

## Standing Committee on Justice Policy

Members' privileges

## Comité permanent de la justice

Privilèges des députés



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
JUSTICE POLICYCOMITÉ PERMANENT  
DE LA JUSTICE

Tuesday 26 November 2013

Mardi 26 novembre 2013

*The committee met at 1502 in room 151.*

## MEMBERS' PRIVILEGES

MS. SHELLY JAMIESON

**Le Président (M. Shafiq Qaadri):** Chers collègues, j'appelle à l'ordre cette séance du Comité permanent de la justice. Je voudrais accueillir notre prochaine présentatrice, Ms. Shelly Jamieson, for a repeat rematch. Ms. Jamieson, I welcome you to be sworn in by our able Clerk.

**The Clerk of the Committee (Ms. Tamara Poman-ski):** Do you solemnly swear that the evidence you shall give to this committee touching the subject of the present inquiry shall be the truth, the whole truth and nothing but the truth, so help you God?

**Ms. Shelly Jamieson:** I swear.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Ms. Jamieson. Just before I offer the floor to you for your introductory five-minute address, I would like to just respectfully remind all members—we even have a parliamentary source for this; I'm impressed—to please be courteous to our witnesses and with peripheral conversations, not citing any particular individuals. Evenly distributing that particular request to all members of the committee, I would invite you to please allow the witness to be heard. In any case, the proof is self-evident, I think.

Ms. Jamieson, your five-minute opening address begins now.

**Ms. Shelly Jamieson:** Thank you, Chair. I'm Shelly Jamieson—

**Mr. Bob Delaney:** Chair, are we not reading the sub-committee report in before we start?

**The Chair (Mr. Shafiq Qaadri):** You're a good person, Mr. Delaney. Pardon me, Ms. Jamieson. We can do it afterwards. I will re-give you your three seconds used so far. Please begin again.

**Ms. Shelly Jamieson:** Thank you. My name is Shelly Jamieson. I'm the CEO of the Canadian Partnership Against Cancer, but I'm here in my capacity as former Secretary of cabinet in the province of Ontario. I did not prepare a statement this time, so I'm happy to turn it over to you.

**The Chair (Mr. Shafiq Qaadri):** Fair enough. Ms. MacLeod, you have 20 minutes.

**Ms. Lisa MacLeod:** Thanks very much, Chair. Welcome back to committee, Ms. Jamieson. I bet that when

you left, you thought you were leaving for good. But do you know what? Once in, never out around here, I suppose.

I'd just like to ask a few questions and then I'll turn it over to my colleague from Renfrew–Nipissing–Pembroke. I'm just wondering what your professional relationship was with the Premier and the cabinet when you were Secretary of cabinet, in terms of your professional role.

**Ms. Shelly Jamieson:** I didn't know the Premier very well when I was appointed Secretary of cabinet. I had been the Deputy Minister of Transportation for two years, but I did not have a lot of exposure to the Premier one on one. My relationship with him was cordial, I would say. I always had the opportunity to give my advice. It wasn't always accepted, but I always had the opportunity to be listened to.

**Ms. Lisa MacLeod:** Were you considered an adviser to him?

**Ms. Shelly Jamieson:** Yes.

**Ms. Lisa MacLeod:** When speaking to the Oakville gas plant and the cancellation in previous testimony—I'm just going to read a statement—you said, "Around April 2011, we received notice that TransCanada intended to litigate. We were named in that litigation. So now, in the Secretary of cabinet's office, that becomes a bigger issue.... Now we were named in litigation, and so I was asked by the Premier's office to look into whether in fact there was a deal to be had to avoid litigation, or something else." I'm wondering, did the Premier's office provide you at that time with any reasoning as to why they wanted to avoid litigation?

**Ms. Shelly Jamieson:** No, they did not.

**Ms. Lisa MacLeod:** But he just made the statement and—

**Ms. Shelly Jamieson:** No, I actually got that direction from his chief of staff, Mr. Chris Morley. I would say it would be a pattern in the province of Ontario to look to avoid litigation where we can. Litigation is not a pleasant exercise. So there would be several times that things would come into Cabinet Office when they had been unresolved and it looked like we were tracking towards litigation. We might ask ourselves, is there something else we could do to avoid that situation? At that point, I saw this as the same as those other instances.

**Ms. Lisa MacLeod:** And what were the steps that were taken after that incident? Obviously, briefing notes would have been written. Meetings would have been had.

You would have obviously briefed the chief of staff to the Premier, if not senior cabinet ministers, on this after that happened.

**Ms. Shelly Jamieson:** So what I did is, I assembled a team of people who I thought could help me in this regard so that we could do some brainstorming about what was possible. As I reported previously, I decided that David Livingston was someone who could help me out in this regard, and he, with the Deputy Minister of Energy, David Lindsay, the Deputy Attorney General, Murray Segal, and myself—and Peter Wallace, to some degree, as the deputy of finance—became a group of people who tried to brainstorm on what we could do to resolve this issue with TransCanada.

**Ms. Lisa MacLeod:** And throughout that period—there are two different chiefs of staff during that period, first with Chris Morley, then David Livingston.

**Ms. Shelly Jamieson:** I was not employed with the province when David Livingston was the chief of staff.

**Ms. Lisa MacLeod:** Oh, I see. Okay. The other question that I have, then, is, while you were brainstorming with all of these individuals, were any of you, at the time, aware of the force majeure measures which were in the OPA contract with TCE that would have protected the OPA from incurring any astronomical costs, I guess, when it came to cancelling them?

**Ms. Shelly Jamieson:** I would say not at the beginning of the exercise, but as we became more familiar, yes. I would say those became clearer to us as we became more familiar with the terms. The contract wasn't between us, the government, and TransCanada. First, there was OPA, and we had to understand the terms of those contracts.

**Ms. Lisa MacLeod:** Well, I guess that becomes an issue because if there were force majeure measures within the contract that would have protected the OPA and effectively the ratepayer through a cancellation, at any point was that advice given to the Premier's office?

**Ms. Shelly Jamieson:** They would know that those provisions were there, yes.

**Ms. Lisa MacLeod:** So they would have known that this could have cost us, effectively, nothing, but they still proceeded the way they did.

**Ms. Shelly Jamieson:** I would say that our group did discuss—there was a scenario where, if things played out a certain way, the contract would have been cancelled, or it would have—

**Ms. Lisa MacLeod:** And what was that scenario?

**Ms. Shelly Jamieson:** If we did not intervene and time proceeded and TransCanada missed certain deadlines.

**Ms. Lisa MacLeod:** What were the responses by the government officials, then? I'm speaking of the political government officials: chiefs of staff, ministers, the Premier's aides and the Premier.

**Ms. Shelly Jamieson:** I was never in a meeting outside of cabinet with a minister, so I wasn't there when that advice was given. I would say all of those different options and discussions went forward through the chief

of staff and some of the other Premier's office officials into a discussion with the senior political advisers.

**Ms. Lisa MacLeod:** So in the last testimony, and I think again in this one, you say that you received direction from at least three sources: the Premier's office, the Premier's chief of staff and the cabinet.

**Ms. Shelly Jamieson:** Yes, I think I said only three sources.

**Ms. Lisa MacLeod:** Okay. At any time did any of these political bodies or individuals approach you—at any time—to discuss the force majeure after you mapped out the scenario, or prior to?

**Ms. Shelly Jamieson:** I think we approached them. I think we talked about—we, the civil service, presented different scenarios that could happen.

**Ms. Lisa MacLeod:** Was force majeure ever discussed in cabinet?

**Ms. Shelly Jamieson:** Not to my knowledge, no.

**Ms. Lisa MacLeod:** Why not?

**Ms. Shelly Jamieson:** I don't know why not, but I don't know. Not to my knowledge. Not when I was in the room.

**Ms. Lisa MacLeod:** Okay. I'll ask one final question and then I'll have my colleague—the AG report makes it clear the government had some, I think, solid footing in the case of Oakville, and arbitration could have possibly provided a better outcome.

The AG at the time references a force majeure that would allow OPA and TCE to walk away from the deal, incurring, as we've talked about, effectively no cost, if either side could not fulfil its contractual obligations within 24 months of the contract being signed. You say that you've mapped out a scenario, or you had mapped out a scenario, where that would have occurred, and that individuals—you would have reached out at the time to let them know.

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The mayor of Oakville testified to this committee that the city was prepared to take its case down to the Supreme Court. We also saw in Oakville that city hall was trying to delay the construction of the gas plants through a variety of different appeals. So it's pretty clear, when you look at it, that the legal mechanisms were in place.

You talk about this scenario that was laid out—one of the, I'm not sure how many, and that's probably another question we should ask. There were legal mechanisms in place that favoured the OPA, and it wasn't until the government waived any of the rights of the OPA that they had in the deal to make TCE whole that we ended up with these problems.

So if they went into the arbitration system, or some sort of litigation process, we would have been in a place where it would have cost taxpayers less. Wouldn't you agree with that, given the force majeure measures?

**Ms. Shelly Jamieson:** It depends how much time you had. There were many scenarios which would have tracked over different periods of time, including the Oakville regulation situation. So all of those scenarios



played out differently and would have different outcomes. I agree with that.

**Ms. Lisa MacLeod:** But I guess I go back to—within a 24-month period, you mapped out a scenario for the government that included the force majeure measures. We know that the mayor of Oakville and the city of Oakville were placing obstacles, that they were prepared to go to the Supreme Court of Canada to make that happen. It became very clear that the OPA could have been protected, yet the cabinet document that was signed effectively threw away, I would say, their bargaining rights. I'm just having trouble understanding why the government wouldn't have taken that seriously and they wouldn't have looked at that option.

So can you explain to me this: Did you ever go to cabinet, or to the chief of staff, and lay out one, two, three, five options of where they could go and at what cost? Or was this purely a political decision made by the Premier to save seats?

**Ms. Shelly Jamieson:** I can say that, verbally, that little group sat around and talked about: What could you do, given the situation? What could you do to stop the Oakville plant? And given that their discussions had fallen apart, we talked about all of those different mechanisms, and the government made a choice, a decision, to proceed with an arbitration agreement.

*Interjection.*

**Ms. Lisa MacLeod:** Okay. Yes, keep going.

**Ms. Shelly Jamieson:** Okay. So I would say that all those options were discussed. Do you leave it to other parties to fight this? Do you leave it to the contract to fall apart? All of those things were discussed in our group, discussed with the chief of staff. I would say the government came back and told us that their decision was to proceed with some kind of arbitrated agreement so that we could look for ways to see if there was a deal to be had.

**Ms. Lisa MacLeod:** Go ahead.

**The Chair (Mr. Shafiq Qaadri):** Mr. Yakabuski.

**Mr. John Yakabuski:** Thank you very much, Ms. Jamieson, for joining us today. I'm kind of picking up where my colleague Ms. MacLeod left off, because it still leaves so many unanswered questions.

The auditor, in her report, made it pretty—this was not a big report. I'm sure you've seen the report. This was not a 100-page report. But the force majeure component of it, she gave quite a fair bit of weight to it. She gave it the attention, I think, that it deserved.

It's very difficult, I think, for people to try to get their heads around this, that if that—particularly when we find out the actual cost of the cancellation. It was certainly a whole lot more than the Premier—either former Premier McGuinty or the current Premier, Ms. Wynne—gave indication that they were aware of all through this process.

So if we accept the auditor's numbers—which we accept, and I think the public out there accepts those numbers; I think the Liberal Party's having trouble accepting those numbers. But given that, and given her

opinion—and I've never heard them question her competence. They may question her math, but they are not questioning her competence. Given her opinion and her judgment that this could have been avoided, it's really hard for someone to understand why they would not have gone down that road or allowed this, because at the end of the day—I don't have the report in front of me because I just rushed down here from caucus, but I'm trying to think of the drop-dead date at which time TransCanada had to have a plant up and operating. We're not that far away, realistically, when it comes to the world of building plants and getting them operating, from that time. Given that the jurisdictions involved here—Oakville was pretty clear that they were going to fight this to the death, if necessary. They actually won. This thing was cancelled.

Why wouldn't the government, given that we're now on the hook for hundreds of millions of dollars, not have gone down that road? I know you're not going to answer that because you don't answer for them, but can you give me even your judgment on this, as to why they chose—

**Ms. Shelly Jamieson:** I would say that my own assessment of the different options was around certainty. I agree that we're sitting here now and Oakville did win, and I agree that it looks like TransCanada wouldn't have met that 24-month time frame. But that wasn't certain when we were having these discussions. So the only thing I can say is that I would have said that these options provided different certainty and different costs.

**Mr. John Yakabuski:** “Different certainty and different costs”—well, zero is pretty low. The auditor's view is that the costs would have been considerably less. There would have been, obviously, some legal wrangling and battling and advising and motions to and fro and what goes on in the legal world. I'm not a lawyer. I thank God every day for that, and I'm sure a lot of other people do too. But in that world, yes, there would have been some costs associated with this, but it would have been nowhere near the costs that we ultimately arrived at. Again, I don't really understand your job completely, because I'm sure it's a lot more complex than we on the outside like to think of as anybody else's job. But as the Secretary of cabinet and working closely with the chiefs of staff, working closely with the deputy ministers of energy and whoever else may have been party to those conversations, would they not have felt that they needed to be a strong—who was actually giving the cabinet, and, ultimately, the Premier or the Minister of Energy, the advice? Even though we have a few pieces of paper, we're never really sure who pulled the trigger on these things, are we? Everybody seems to like to point to the other person as the one who actually made the call, but when it comes right down to it, I guess the Premier is the one who makes the call.

Was somebody not strongly saying, “I'm doing this on behalf of the taxpayers of Ontario. I'm doing this on behalf of ratepayers. I'm doing this on behalf of you, sir. In the end, this is going to be a big problem”? It looks like half of the book has been written already, this force



majeure. It looks like half of the book has been written. We've got the opponents on one side promising a holy war over this, so we know that this time frame now becomes a real issue. Would it not have been incumbent upon the advisers to say, "Let's just let this play out, and in the end, we strongly believe that we're going to be successful"?

**Ms. Shelly Jamieson:** There's a long and proud history of the civil service giving advice to politicians here. Our relationship with them at various times in history has been closer and further apart and different things. As I said at the very beginning, I was always encouraged to give my advice. I gave my best advice, and so did those around me. We talked about all of these issues. There is a political calculus, and at the end of the day, the Premier and his colleagues made a decision, and our job was to execute it.

**Mr. John Yakabuski:** Okay. We are talking about something that has already happened, and part of this committee's work is to try to ensure that it doesn't happen again. It would certainly be part of my thinking that, hey, let's hope we're never going down this road again, because it was a bad road from the start; a bad road from when they initiated the planning; a bad road when they first agreed to build a plant on this site without doing their homework in the first place. But my goodness, if we ever get into that situation again, I think the provisions of force majeure have to be explored a whole lot more deeply as to whether or not this is the way to ultimately make the best deal on behalf of the ratepayers of the province of Ontario.

1520

MOUs are pretty standard business for cabinet ministers, right?

**Ms. Shelly Jamieson:** Yes.

**Mr. John Yakabuski:** I was just hoping you could give us some insight on how an MOU would be discussed in cabinet and how much detail would be given.

**Ms. Shelly Jamieson:** Do you mean the arbitration agreement specifically here, in the summer of 2011?

**Mr. John Yakabuski:** Yes, I am looking at that, but in general, if there's a memorandum of understanding, what does cabinet know about these things?

**Ms. Shelly Jamieson:** I would say that there are different decision-making processes. There are long and short ones, big and little ones. Some of them are a dialogue with cabinet over a period of years, frankly, where there's policy work developed through work with stakeholders and discussion and research around the world. Decks come forward to cabinet that are for information and discussion, and then a series of large options might be laid out, and then it would go back and turn into a shorter list. So there are long processes like that where the civil service is very involved.

There are other decisions where the civil service is not very involved, where the government of the day comes in with a platform idea with colleagues and stakeholders in the community and they make up their mind and come

and tell us, "Here's what we're doing," and that's a different kind of process.

Then there's another kind, which is, I would say, the more urgent kind: the issues that pop up that have political interest and political attention, where options are asked to be investigated quickly and where there aren't numerous trips to cabinet.

In this case, as you know, the arbitration agreement had a walk-around, so there were four members of cabinet who signed that in July for Oakville. The full discussion at cabinet was at the next cabinet meeting, when it would have been reported that there was a walk-around. That's our process for transparency to the rest of cabinet.

**Mr. John Yakabuski:** So prior to the walk-around, there was no discussion in cabinet?

**Ms. Shelly Jamieson:** Not that I was present for, no; perhaps in ministers-only. Sometimes I stayed in ministers-only and sometimes I did not.

**Mr. John Yakabuski:** We're talking about something that ultimately resulted in hundreds of millions of dollars in costs had a cursory walk-around?

**Ms. Shelly Jamieson:** With provisions in the arbitration agreement, we weren't allowed to go and settle a deal. We had to bring anything back. The arbitration agreement was about getting a pause and having people say—

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. Shelly Jamieson:** —"Is there something that can be done here that can bring this to the ground and make it resolved?"

**Mr. John Yakabuski:** Is it typical for cabinet ministers in a walk-around—so four cabinet ministers signed, and you walked it around to see whoever was available, that sort of thing. You personally didn't walk it around.

**Ms. Shelly Jamieson:** I did not. I had members of the executive council—

**Mr. John Yakabuski:** Yes, but somebody walked it around and said, "Listen, we need four signatures here."

**Ms. Shelly Jamieson:** We would get direction from the Premier's Office about who would sign and why. Sometimes it was convenience and sometimes—Minister Bentley signed that particular one. We would always have had the minister responsible as the signatory for a walk-around.

**Mr. John Yakabuski:** Right. So the other three people who signed it were informed? They knew what they were signing?

**Ms. Shelly Jamieson:** They were briefed by Chris Morley.

**Mr. John Yakabuski:** They were briefed by the Premier's chief of staff at the time.

**Ms. Shelly Jamieson:** Yes.

**Mr. John Yakabuski:** So they knew what they were signing. They weren't signing it blindly.

**Ms. Shelly Jamieson:** They would have perhaps had a high-level briefing. I wasn't there for it, but yes. I know that Mr. Morley spoke to all of them.



**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Yakabuski. To Mr. Tabuns.

**Mr. Peter Tabuns:** Thank you, Chair. Thank you for returning, Ms. Jamieson. You were just responding to some questions from the opposition that you had meetings in which you discussed all the options prior to settling on the arbitration option. Present in those meetings were Mr. Morley as chief of staff—

**Ms. Shelly Jamieson:** He would have been at some of them—I just want to be clear—not at all of them.

**Mr. Peter Tabuns:** Can you tell us the main options that you canvassed in your group?

**Ms. Shelly Jamieson:** We tried to—I have to be careful not to mix up Mississauga and Oakville, because—

**Mr. Peter Tabuns:** Let's focus on Oakville right now.

**Ms. Shelly Jamieson:** Okay. We did spend some time trying to understand what had been the problem between the OPA and TransCanada; in other words, why they hadn't come to a conclusion. Once we could identify what those issues were, perhaps we could figure out if there was a solution for those.

We talked about relocation options on a very broad scale; I've since come to understand the specifics about some of them, but that wasn't the case. We just sort of said, "Is there somewhere else in the province where we could do something else?"

We talked about how we could approach them should the OPA continue to be the approach point. Was that relationship done, or should we be more involved and have a different point person, and that would be before we involved David Livingston.

We talked about the Oakville bylaw, we talked about force majeure, we talked about the probabilities of success and failure through those options, and we talked about siting options. So if you were going to ever do this again, maybe you stick with this one—we did this with Mississauga as well—but you come out with new options that somehow better understand what the community really wants.

I think those are—

**Mr. Peter Tabuns:** You didn't discuss litigation in this?

**Ms. Shelly Jamieson:** Oh, yes. I'm sorry. The back-drop of that, of course, was litigation—I apologize. We discussed letting it go to litigation and what would happen, and we didn't like our chances in litigation.

**Mr. Peter Tabuns:** Why didn't you like our changes in litigation?

**Ms. Shelly Jamieson:** A whole series of reasons. I did get a legal opinion on where we stood. Imagine if you had a contract with somebody and you were compliant to date with everything in that contract, and someone phoned you up one day and said, "We're ripping it up." You'd be not very happy, and that was the reaction, both with Eastern Power and with TransCanada. There was a series of things that I thought contributed to weakening our case.

**Mr. Peter Tabuns:** Okay. I assume that Chris Morley came back to you and said, "We're going with arbitration." Am I understanding that correctly?

**Ms. Shelly Jamieson:** Correct.

**Mr. Peter Tabuns:** Did he give his reasons for selecting arbitration?

**Ms. Shelly Jamieson:** I don't believe so, no.

**Mr. Peter Tabuns:** Okay. What option did you favour?

**Ms. Shelly Jamieson:** Did I favour? It's easier for me to answer: I did not favour going to litigation.

**Mr. Peter Tabuns:** Okay, and of the others?

**Ms. Shelly Jamieson:** I believe that around the table we all had different opinions, and that's a good thing; it's a healthy debate. I believe I was more a proponent of staying the course and coming up with new siting options, but, you know, I wasn't the decision-maker.

**Mr. Peter Tabuns:** Okay. So from that point, you had your discussion and you gave your assessment—the group of you gave your assessment—to Mr. Morley.

**Ms. Shelly Jamieson:** Correct.

**Mr. Peter Tabuns:** Did this matter then go to cabinet for debate before there was a workaround?

**Ms. Shelly Jamieson:** No.

**Mr. Peter Tabuns:** So there wasn't a debate—

**Ms. Shelly Jamieson:** When you say "cabinet," a formal cabinet meeting?

**Mr. Peter Tabuns:** Yes.

**Ms. Shelly Jamieson:** They might have talked about it in caucus. They might have; I don't know. But at the time I was responsible for the minutes of cabinet, and so I can tell you that I know what was discussed from that perspective, and prior to July 29, 2011, there wasn't a decision or lengthy, or even any, discussion that I recall on Oakville.

**Mr. Peter Tabuns:** So Chris Morley tells you that arbitration is a good idea. From that point until the workaround, you are not involved in any discussion in cabinet in which there is a debate about what the best options are?

**Ms. Shelly Jamieson:** No, I was not, but during the time period up until July 29—or was it immediately following? Anyway, that's when I asked David Livingston to help out and to go and approach TransCanada. So it's immediately after that.

**Mr. Peter Tabuns:** You were just talking about how people are selected for a walkabout.

**Ms. Shelly Jamieson:** Yes.

**Mr. Peter Tabuns:** Obviously Chris Bentley, as Minister of Energy, would be part of that. How were the other three selected?

**Ms. Shelly Jamieson:** I know that Minister Wynne was selected because she was in the neighbourhood at the time. I do know that she was here, and we call on the Toronto-based ministers more frequently because it means our staff aren't in the car driving around. Minister Duncan was included because there was a financial impact—

**Mr. Peter Tabuns:** Okay.

**Ms. Shelly Jamieson:** —and actually, I'm not recalling at the moment who the fourth—

**Mr. Peter Tabuns:** I think it was Linda Jeffrey who was the fourth.

**Ms. Shelly Jamieson:** I'm not sure; I'm sorry. I don't recall the rest of it.

**Mr. Peter Tabuns:** Can you tell us what role the Premier's office, separate from the Ministry of Energy, has in directing the OPA?

**Ms. Shelly Jamieson:** What role the Premier's office has?

**Mr. Peter Tabuns:** Yes.

**Ms. Shelly Jamieson:** I wouldn't say they have a role, except through the minister's office. So they would speak to their colleagues in the minister's office, but I wouldn't say they had a role in directing the OPA.

**Mr. Peter Tabuns:** You became aware later that the Premier's office had been negotiating or talking directly with TransCanada. Were you surprised at that?

1530

**Ms. Shelly Jamieson:** I was, because I didn't understand that those conversations were going on. In hindsight, it is the job of the political staffers to have relationships with the stakeholders, and perhaps I just didn't ask the right question.

**Mr. Peter Tabuns:** Hmm.

**Ms. Shelly Jamieson:** It is true that political staff have relationships with key stakeholders, so they were having meetings, and I didn't find out about it until it was reported back through the Ministry of Energy that they had heard this.

**Mr. Peter Tabuns:** Sorry. So the Ministry of Energy had not heard?

**Ms. Shelly Jamieson:** They came to tell me.

**Mr. Peter Tabuns:** When did they come to tell you?

**Ms. Shelly Jamieson:** It was sometime after April when I was asked to do this, shortly after—

**Mr. Gilles Bisson:** April—

**Ms. Shelly Jamieson:** —of 2011.

**Mr. Peter Tabuns:** April 2011. So in fact, they had had discussions with TransCanada the summer before—

**Ms. Shelly Jamieson:** Probably in the fall. The deputy of energy spoke to me about it.

**Mr. Peter Tabuns:** And he spoke to you about it as soon as he knew about it?

**Ms. Shelly Jamieson:** Yes, he did.

**Mr. Peter Tabuns:** So discussions had been going on for several months before the Deputy Minister of Energy knew about it and, thus, you knew about it?

**Ms. Shelly Jamieson:** As far as I know, yes.

**Mr. Peter Tabuns:** When you found out that the Premier's office staff were talking to TransCanada, did you ask them what they had discussed and what they had committed to?

**Ms. Shelly Jamieson:** No, I didn't. I sought the advice of the Deputy Attorney General, because at that point we had been served notice of intent to litigate. I wanted legal advice on what we should do. His advice to me was to screen these three individuals off of the file. I took the extra step of having them interviewed by crown attorneys so that I wasn't asking them; somebody else was asking them. And they were to turn over their notes.

**Mr. Peter Tabuns:** I've got a few other questions. Do you mind?

**Mr. Gilles Bisson:** Yes, go ahead, as long as I get some time.

**Mr. Peter Tabuns:** One of the things that was striking to us when Colin Andersen was here most recently was that his instructions about the termination of the arrangement with TransCanada were delivered verbally. Is it common for decisions of this magnitude to be delivered simply verbally and not in writing?

**Ms. Shelly Jamieson:** I'm a little confused by that, because I thought there was a letter. That's how I first heard about this, about a week before the letter went from the minister. Did a letter not go to the OPA?

**Mr. Peter Tabuns:** Apparently not.

**Ms. Shelly Jamieson:** I don't think—October 7 is one of the three dates I wrote down here.

**Mr. Peter Tabuns:** Yes, about 10 days before—

**Ms. Shelly Jamieson:** Oh, well, that's not that uncommon, a heads-up.

**Mr. Peter Tabuns:** —the OPA was informed verbally that this was happening—

**Ms. Shelly Jamieson:** No, that's not that uncommon: "This is happening, and you will receive written instruction about it." The minister had the authority to issue such a letter—without going to cabinet, by the way.

**Mr. Peter Tabuns:** I will double-check, but I'm not sure a letter actually was issued.

What's the legal purpose of the letter?

**Ms. Shelly Jamieson:** It's a directive, an instruction. The reason why I remember this is because the deputy of energy came to see me and said, "My minister is thinking about writing this letter," and that was news to me. I went to the Premier's office to check that it wasn't news to them.

**Mr. Peter Tabuns:** And so a letter would be a ministerial directive?

**Ms. Shelly Jamieson:** Correct.

**Mr. Peter Tabuns:** I'll tell you right now, it's not listed on the list of ministerial directives.

**Ms. Shelly Jamieson:** Well, I remember a discussion in our office about whether the minister had the authority to do this.

**Mr. Peter Tabuns:** I have no doubt of that.

**Ms. Shelly Jamieson:** That's all I remember about it.

**Mr. Peter Tabuns:** What's the political/legal implication of a ministerial letter? Why is it necessary for giving direction to arm's-length organizations?

**Ms. Shelly Jamieson:** Because boards need to know that they've been instructed to do something. They, of course, also want it in writing.

**Mr. Peter Tabuns:** As far as I know, this was verbal.

Anyway, when you got into the discussions, and I'm going to move back in time to your discussions with Chris Morley and your other advisers, were you given a briefing on the protections for Ontario in the contract with TransCanada?

**Ms. Shelly Jamieson:** The protections for the OPA or for Ontario?



**Mr. Peter Tabuns:** Sorry; for the OPA.

**Ms. Shelly Jamieson:** I personally would have been given a very high-level briefing. There are a lot of people who spend a lot of time with those contracts and with the OPA, kind of pulling that apart. To be honest, my role was more, “What did you find? How did it go?” as opposed to actually reviewing the contract.

**Mr. Peter Tabuns:** So when you made the decision around arbitration—sorry, when your group presented that option to Morley, and Morley came back and said, “We’re going to go with arbitration,” was there a discussion about what things would be given up and what things would be included in that arbitration effort?

**Ms. Shelly Jamieson:** There was general discussion within the group about that, yes.

**Mr. Peter Tabuns:** So everyone knew that the protection against paying lost profits was something in the OPA contract and was going to be abandoned in the arbitration.

**Ms. Shelly Jamieson:** I believe—my recollection is that Colin Andersen in particular said that. It was an element of the entire picture, and I believe it was discussed.

**Mr. Peter Tabuns:** Okay. Go ahead.

**Mr. Gilles Bisson:** Just a couple of questions: Can you walk us through, just quickly—you want to get something discussed at cabinet. What’s the process? There’s an agenda, I take it?

**Ms. Shelly Jamieson:** Yes.

**Mr. Gilles Bisson:** And you control that?

**Ms. Shelly Jamieson:** Well, we—

**Mr. Gilles Bisson:** Well, you don’t control it, but somebody has to manage it, is my point.

**Ms. Shelly Jamieson:** Yes, we’re the process air traffic controllers. We meet with the Premier’s office to say, “This is what we think is coming to cabinet. Anything you don’t want here, and anything you do want here?”

**Mr. Gilles Bisson:** So if I’m a minister of the crown and I have an issue, do I flag it with my Premier or do I flag it with you?

**Ms. Shelly Jamieson:** Probably both. You send your deputy into cabinet office and you send your minister in to the Premier.

**Mr. Gilles Bisson:** Do you guys still have P and P? We used to have P and P back in the day.

**Ms. Shelly Jamieson:** They did when I was here, but—

**Mr. Gilles Bisson:** But the planning and priorities is still there?

**Ms. Shelly Jamieson:** When I was there, yes.

**Mr. Gilles Bisson:** Okay.

**Ms. Shelly Jamieson:** It was somewhat merged with treasury board at one point, and the structure changed at one point.

**Mr. Gilles Bisson:** Does stuff typically go there before it goes to cabinet?

**Ms. Shelly Jamieson:** Most items, yes.

**Mr. Gilles Bisson:** Okay. So, once—

**Ms. Shelly Jamieson:** Most items go to some committee before they come to cabinet.

**Mr. Gilles Bisson:** So then there’s a minute—not a minute. There’s an agenda that’s developed as a result of requests that come in to you or requests that come in to the Premier’s office. There’s obviously a meeting between your people and the Premier’s people, and then there’s an agenda set. If you have an item to be discussed, it’s on the agenda, I take it. It’s a printed agenda, right?

**Ms. Shelly Jamieson:** That’s correct, yes.

**Mr. Gilles Bisson:** I’m just trying to recall. And when that item comes open and it becomes a discussion at cabinet, that discussion is minuted in some way?

**Ms. Shelly Jamieson:** The decision is minuted.

**Mr. Gilles Bisson:** I know the decision is minuted. My question is, is the discussion minuted?

**Ms. Shelly Jamieson:** No.

**Mr. Gilles Bisson:** Some things don’t change. But all supporting documents would be in the discussion around item A or whatever that item is that comes to cabinet. There would be an agenda that says, “Item A is coming to cabinet on such-and-such a date.” Then you would reflect the decision that was made by cabinet—

**Ms. Shelly Jamieson:** Correct.

**Mr. Gilles Bisson:** —and any supporting documents would then be attached to that?

**Ms. Shelly Jamieson:** Correct.

**Mr. Gilles Bisson:** And any of the discussions that happened at cabinet—what happens to those? They’re not minuted whatsoever?

**Ms. Shelly Jamieson:** No, they’re not.

**Mr. Gilles Bisson:** Then it’s just a recollection of who was at the meeting.

**Ms. Shelly Jamieson:** About the discussion? Yes. But just to be clear, I actually signed the minutes as Secretary of cabinet, to make sure that these were the decisions that cabinet took.

**Mr. Gilles Bisson:** Okay. What happens if you’re at cabinet and there’s an item—is there, like, an “Other items to be discussed”? Do people bring stuff up—“Oh, by the way, I just found out on the way through the door that”? I don’t remember those happening, but does that happen in your—

**Ms. Shelly Jamieson:** No. Maybe the day before, something might get added—

**Mr. Gilles Bisson:** No, no. I mean at the meeting.

**Ms. Shelly Jamieson:** No, not that—

**Mr. Gilles Bisson:** So you’re pretty limited to what’s on the agenda?

**Ms. Shelly Jamieson:** Yes. There is a ministers-only discussion, typically at the end, so I’m not speaking to that.

**Mr. Gilles Bisson:** That’s where I’m going. So the ministers—normally, you get to the end of the agenda and all of the decisions are minuted, and attached documents are there. Then you go to a ministers-only. At times, political staff are there; at times, you’re there as well?

**Ms. Shelly Jamieson:** Sometimes I was there, and if the conversation, frankly, was too political, I left.

**Mr. Gilles Bisson:** But sometimes you'd be asked to leave the room as well, right?

**Ms. Shelly Jamieson:** That's true, yes. In fact, it would be the reverse. I would assume I'm leaving unless I was asked to stay.

**Mr. Gilles Bisson:** Okay. Are there any minutes of decisions made at the ministers-only?

**Ms. Shelly Jamieson:** They can't make decisions without the secretary attesting to a decision as cabinet—

**Mr. Gilles Bisson:** Is there any record of the discussion?

**Ms. Shelly Jamieson:** No.

**Mr. Gilles Bisson:** Okay. And as for P and P, it's the same process?

**Ms. Shelly Jamieson:** Yes.

**Mr. Gilles Bisson:** Because you would have the same process, and you could end up as a ministers-only at P and P, right?

**Ms. Shelly Jamieson:** Correct. All of the various cabinet committees—they did take different structures at different times, so I'm making a general—

**Mr. Gilles Bisson:** Yes, I understand. I've sat on a number of them.

I'm going to go back to Mr. Tabuns in a minute. I just have one other question.

Back on the question of the deletion of documents, there are a number of documents and emails that were deleted off hard drives and all that kind of stuff. Was that your practice when you were there?

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**Ms. Shelly Jamieson:** Was that my practice?

**Mr. Gilles Bisson:** Yes.

**Ms. Shelly Jamieson:** No—well, transitory records.

**Mr. Gilles Bisson:** Yes, "Please come and get the quart of milk," that kind of stuff; you didn't worry about that stuff.

**Ms. Shelly Jamieson:** Or "Me too" as a "Reply all."

**Mr. Gilles Bisson:** Yes. But you would have kept, and most of your colleagues would have kept, documents that were related to decisions that were being made at cabinet. You wouldn't automatically delete those?

**Ms. Shelly Jamieson:** That's correct. I will say, in my office, when I was there, the actual responsibility for keeping the documents reflecting cabinet is actually not my computer, me. It is a responsibility because we are the central record-keepers.

**Mr. Gilles Bisson:** So whose responsibility is it?

**Ms. Shelly Jamieson:** The executive council—of Cabinet Office. There's a whole machine there. That's who I would rely on to retrieve documents, etc., that pertained to cabinet specifically.

**Mr. Gilles Bisson:** What would happen to your emails and stuff?

**Ms. Shelly Jamieson:** They're there.

**Mr. Gilles Bisson:** It's kind of odd that a whole bunch of stuff would be deleted, right?

**Ms. Shelly Jamieson:** Yes.

**Mr. Gilles Bisson:** In this case, it would appear that a lot of the documents that are related to the issue of contempt and some of the issues around the cost have been deleted, which is kind of odd, is it not? It's not the normal practice, is my—

**Ms. Shelly Jamieson:** That's not happening in the civil service, is it?

**Mr. Gilles Bisson:** No, no; I'm just saying it's kind of odd that that would be done, that you would be in the Premier's office or the Minister of Energy's office or whoever's office and you would be deleting records that are sensitive. That's not what you normally see in government, right?

**Ms. Shelly Jamieson:** Correct.

**Mr. Gilles Bisson:** Okay.

**Mr. Peter Tabuns:** Going back to approvals, and it may be that I'm simply not familiar with procedure, the arbitration agreement with TransCanada had to be run through cabinet. It was minuted. It went forward. The decision to cancel the contract in the first place—was that something that came to cabinet? If the arbitration came to cabinet—

**Ms. Shelly Jamieson:** No, it did not, because the minister had the authority to do it.

**Mr. Peter Tabuns:** On his or her own, without coming back?

**Ms. Shelly Jamieson:** I believe that's the case; it's my recollection, Mr. Tabuns.

**Mr. Peter Tabuns:** Did the Premier have the authority to do the same, or did the authority rest with the minister?

**Ms. Shelly Jamieson:** No, I think the authority sits with the minister.

**The Chair (Mr. Shafiq Qaadri):** One minute.

**Ms. Shelly Jamieson:** But a minister wouldn't do that without—

**Mr. Peter Tabuns:** Without?

**Ms. Shelly Jamieson:** —speaking to a Premier.

**Mr. Peter Tabuns:** Would the Premier do it without talking to a minister?

**Ms. Shelly Jamieson:** I don't know. One way around, the person could find themselves out of a minister's job, so—

**Mr. Peter Tabuns:** True, eh? True.

Is it standard practice for the Premier's office to make commitments on projects which are in the hands of ministries?

**Ms. Shelly Jamieson:** Standard practice, no. I would say it's collaborative; they work together. There's someone in the Premier's office assigned to all of the ministries, so they would be part of that team. When you say "make decisions," I see it more as collaborative. In some cases, the civil service would be involved in that team working on an issue as well.

**Mr. Peter Tabuns:** But to your knowledge, it isn't common for the Premier's office to reach into a ministry and make a major decision about a project without involving the minister—



**Le Président (M. Shafiq Qaadri):** Merci, Monsieur Tabuns. Je passe la parole à mon collègue M. Delaney.

**Mr. Bob Delaney:** Good afternoon, Ms. Jamieson; good to see you again.

**Ms. Shelly Jamieson:** Good afternoon.

**Mr. Bob Delaney:** I just want to touch on, actually, some of the points that were raised by my colleagues opposite on redaction and deletion of documents. Sometimes, “redaction” in the committee has been interpreted to mean that information was kept from the public or the reader on purpose. There have been some allegations that documents were, in fact, hidden. You actually spoke to this during your last appearance, that redactions don’t take place as an attempt to hide anything but rather because there may be personal or commercial or sensitive information in those documents, and in fact, there’s a very structured disclosure process.

As not all of the committee members present today were present at your last appearance, could you just quickly recap that issue once more to ensure that we understand what that process entails?

**Ms. Shelly Jamieson:** I feel strongly about the rights to redaction. I was fussed the last time I was here that the committee didn’t trust the process that the civil service uses. Never, ever, was I asked in the time that I was secretary of cabinet about whether something should be redacted or not. That is not something that we’re involved in. There are professionals who have decision trees who oversee that whole process.

But I feel strongly—at the time, I was an employee of the Ontario public service and I, too, have rights. If I’m writing about a doctor’s appointment on the bottom of an email—I would never do it again, but I did, on the bottom of a gas plant email; I was just explaining why I would be absent—I don’t actually relish that being part of the committee proceedings or the public record. I believe that, as an employee, I actually have rights; they’ve been proven in court.

I worry about redaction, and I wondered if this committee could come up with a way to have confidence in what’s redacted. That could be to have a little group of people who review the redaction, or have an honest third party who is making sure that that’s what’s going on. But I don’t think that we should automatically move to “We’re not going to redact anything,” because there are some things that actually should be redacted.

**Mr. Bob Delaney:** Okay. Just quickly cover document deletion.

**Ms. Shelly Jamieson:** Document deletion: There are documents that are deleted. For example, if a document is written by somebody else and sent to me, it’s actually not my responsibility to be the keeper of that document. That’s how you’ve ended up with 35 or 3,500 or 350 of a single deck that has shown up all over the place. I’ll accept that perhaps it’s not well understood, but the responsibility is housed with the people who created the document—unless I’m commenting back on the document, and then I have a responsibility to keep what I created. I just think there’s room for improvement in the

process, and I’m hoping the committee will make some recommendations to that.

I will say that when I think of, over the last few years, the manpower that has been used to produce for this committee—and I’m a supporter of this committee. I said, the last time I was here, that I was glad this issue was being reviewed at this committee. So I’m a supporter of the committee. But you can’t actually be loving that you’re getting all of this duplicate information. The time and attention that it’s taking for people to produce this—it has become, I understand, a cottage industry.

There must be better guidelines around making sure that you get what you need and that the civil service is not seen to be obstructing it—which I actually don’t believe is possible. Everything is so many places that it’s almost impossible for the civil service to hide something, I have to say.

**Mr. Bob Delaney:** And yet in the last 10 years, it is now possible for stuff to be in so many places, simply because the technology to store the information wasn’t there 10 years ago. Ten years ago, you had to delete it, because you had nowhere to put it.

**Ms. Shelly Jamieson:** Yes.

**Mr. Bob Delaney:** As the ability to store stuff increased—I’m kind of guessing here—our policies may have trailed a bit behind technology.

**Ms. Shelly Jamieson:** I think perhaps that’s true. I also worry about risk aversion in terms of a paralysis that will exist where the people of Ontario actually won’t get the good advice from the civil service, because everyone will be afraid to write anything down to do with anything, any time. I don’t know how that serves us.

**Mr. Bob Delaney:** Right. Yet there are, as Chris Morley told us, 99 different reasons why you have to delete documents.

**Ms. Shelly Jamieson:** There are instructions from the Ministry of Government Services—or there were, when I was here—about space on the system and not cluttering it up, so there are some expectations that you don’t keep everything.

There’s some balance that we need to find between what we should keep, so that the story can be told about how decisions were made and that we’re transparent and accountable—but I think that there are also some rights in terms of redaction. I think there is some ownership clarity that we should have: Whose responsibility is it to keep what?

**Mr. Bob Delaney:** Okay. To switch topics just a little bit, to go back to both Oakville and Mississauga—in this case, Oakville—all parties at that time, even in 2010, had agreed that this plant should be cancelled. Correct?

**Ms. Shelly Jamieson:** In 2010?

**Mr. Bob Delaney:** In 2010, which is roughly when—

**Ms. Shelly Jamieson:** You know, I’m not sure that I would know that for sure. I did know that in the summer of 2011. I just can’t speak to—it wasn’t on my radar before that. But by the time I joined the game, there were some entrenched positions, so I assume that you’re right.

**Mr. Bob Delaney:** You had talked about the probabilities and the risks involved in the different scenarios as



you constructed the decision tree. Sometime after you made your first appearance, Chris Breen from Trans-Canada Energy was here and he said they were ready to pursue all legal avenues to ensure that they were able to fulfil the contract that they had been granted, despite the bylaws and other measures passed by the town of Oakville.

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Not that long ago, the Auditor General was here and she said to me that she had a legal opinion that Trans-Canada Energy was on track to win all five cases that they had. What might the ramifications have been to the province if TCE had actually won all of those?

**Ms. Shelly Jamieson:** Well, we would have paid a lot of money. We would not have had a relationship with a valued supplier, a valued vendor. I believe that in my little group, when we were talking, we were trying to figure out, if we were going to spend a lot of money, how we got some value—how we actually got some electricity. So we were looking at options where we could try and make sure that even if we did have to pay out a lot of money, there was still power being produced; it wasn't just a lawsuit.

**Mr. Bob Delaney:** Right. So when you say that we would have paid out a lot of money, although I don't need you to speculate on how much, could you speculate on some of the categories in which we would have paid out the money? Like, what type of money would we have paid out?

**Ms. Shelly Jamieson:** Well, I think early on there were—I remember asking the question about sunk costs. I remember knowing that turbines—I learned more about turbines than I ever knew—were worth about \$200 million to \$210 million, and they were being built, so it would be better to use them than it would be to just receive them and not have anything to do with them. So that was one.

There was gas delivery and management costs, transmission costs.

I suspect they would have pursued legal costs. I suspect they would have. I don't know how that would have gone.

There's land costs—are we talking about Oakville?

**Mr. Bob Delaney:** Yes.

**Ms. Shelly Jamieson:** Okay. Mississauga, there's also demolition.

**Mr. Bob Delaney:** So in essence, then, to try to find a route that did not lead through litigation, I'm making the assumption that you were trying to find a prudent course that would optimize the value for the province and minimize the absolute costs and the risk of incurring additional unpredictable costs.

**Ms. Shelly Jamieson:** I would say that was the discussion between my deputy colleagues and I. That's what we were trying to do. We were trying to come up with options that fulfilled that. It was difficult.

**Mr. Bob Delaney:** Okay. One of the other mandates of the committee is in fact the future siting of gas plants and what type of consultations should take place on that. The Premier, in her throne speech and on multiple

occasions thereafter, said that the government should incorporate more local decision in the siting of energy infrastructure projects.

In this vein, the Independent Electricity System Operator and the Ontario Power Authority jointly delivered a report at the request of the Minister of Energy to provide recommendations on these types of siting issues going forward. The government said that we accept them and in fact we'll implement the 18 recommendations.

During your last visit here, you said that you were "confident that the OPA had followed its public consultation process" with the existing rules in place at the time. You also said that you were "completely convinced that the people of Mississauga and Oakville didn't want those gas plants in the end," which were your words. At the time, in your last visit to the committee, you mentioned that Ontario had been successful in siting 13 other gas plants, but that on this issue of Oakville you had wished there was a more fulsome debate with the people of Oakville.

What are some of the observations, in light of all of this, that come to your mind from your perspective and your place in government that would be helpful to the committee going forward, having had a chance to reflect on what the committee has done so far?

**Ms. Shelly Jamieson:** Well, on the local decision piece, I believe that the opinions of these communities changed over time and that time didn't match with the development of these plants. That's an effective lobby, an effective campaign inside those communities that got more people focused than were during the initial phases. So I think we have to better understand that process and make sure that people are engaged at the consultation time and not later, and that there should be some point at which the ship has sailed and that a decision can't or shouldn't be reversed. When do you change your mind?

I also was dismayed. I think if I asked people who were really involved in the decision in Oakville, in the Oakville community, if they understand the ramifications of actually not having a gas plant—where was the debate about what this means? Because if they're not going to generate energy—they don't need it right away, I understand. But at some point in the future, Oakville needs energy, and if they're not going to generate it, it's going to have to be transmitted or it's going to have to be brought in to their community. That has also land use and environmental and community impact that nobody is even talking about. So I'm not sure we've gotten to a point where we're actually having an honest debate with the people of Oakville about what they are going to do to get their electricity.

**Mr. Bob Delaney:** In the course of the last month or two, one of the points that has come out is that while municipalities have to plan for water and sewer, waste removal and many other municipal services, one of the things that, ironically, they don't have to plan for is the availability of electricity if you're planning a new subdivision. Do you want to keep going on that theme and—

**Ms. Shelly Jamieson:** I just think we need to have a more honest dialogue in communities about what they're



going to need and when and how they are going to get it, because if we're bringing transmission lines into Oakville, I'm pretty sure that's going to be disruptive somewhere in Oakville, and that's the choice they have made.

We had other communities, and I can't recall who they were, who were begging for gas plants, because they didn't want transmission lines. This is the reverse, but did they understand what they were picking and why?

So these ships have sailed, and I understand that, but I think when we go back next time, we should have a better debate, and we should also have better understanding about buffers and setbacks etc. It seems that some work should be done in that regard.

**Mr. Bob Delaney:** Have you kept up to date with the progress that the government has made in making ministers, political staff and others aware of their records retention responsibilities?

**Ms. Shelly Jamieson:** I have. Actually, I've had a discussion with the current secretary of cabinet about it.

**Mr. Bob Delaney:** All right. When Ann Cavoukian appeared before the committee, in fact, she commended the work that the Premier has done and said that the government had been very forthcoming and co-operative in working with her office on improvements. What's your perception of the directives given by the Premier and the focus on openness and transparency?

**Ms. Shelly Jamieson:** While I'm not sure I'm as familiar with the detail, I would just say that I understood, through Peter Wallace, the secretary of cabinet, that there was a re-emphasis on training, on responsibilities and requirements. Apparently, that's needed. I can't speak to the detail, Mr. Delaney; I'm sorry.

**Mr. Bob Delaney:** Okay. Chair, how am I doing on time?

**The Chair (Mr. Shafiq Qaadri):** You have about six minutes, Mr. Delaney.

**Mr. Bob Delaney:** Okay.

**The Chair (Mr. Shafiq Qaadri):** Use it well.

**Mr. Bob Delaney:** Chair, I think I'm going to stop here on this round.

**The Chair (Mr. Shafiq Qaadri):** I would concur.

Mr. Yakabuski?

**Mr. John Yakabuski:** I would concur as well. Thank you very much. It's much appreciated. Do we get the time—

*Interjections.*

**Mr. John Yakabuski:** No, I just mean I concur that he's decided to end at this point.

Thank you, again. I really appreciate the answers that you're giving as well. You've talked about a lot of things in your answers to Mr. Delaney. One of them, I think, speaks to the kind of mess that happens when politics rules the day, as opposed to policy. You're painting us a picture of the future, of what it could be like when decisions are made based on the politics of the issue, as opposed to what may or may not be the right policy.

You also talked about—I'm going to get back to this, but first I want to just finish up maybe where I left off in

round 1, because you never know when he's going to concur with me.

So we were talking about the signing of these MOUs and the walk-around and stuff like that. Mr. Tabuns kind of asked some questions around that, too. It just seems that maybe the gravity either isn't there, or maybe that's what we're being led to believe: that the gravity isn't there, the importance isn't there.

When you sign a cabinet document as a minister, that's a serious issue, is it not? I mean, you're signing something that is of paramount importance. Is that not correct?

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**Ms. Shelly Jamieson:** Yes, that is correct. There are a lot of cabinet documents, but in this instance, this is a big decision.

**Mr. John Yakabuski:** Okay. Let's talk about this one in particular.

**Ms. Shelly Jamieson:** This is a big decision. I agree with you.

**Mr. John Yakabuski:** This was a big one. This a decision about what the next step was going to be in trying to deal with or mitigate the gas plant issue, the cancellation decision in Oakville. This is serious.

It's funny. They made the decision to build the plant in September 2009, and a year later, they cancelled it. It had been on—sorry. The contract was issued in September 2009; the decision was made in 2004, or maybe 2005. I don't have all the notes in front of me. But it took them all these years, and then they sign a contract, and within a year, they cancel that contract, which started the whole ball rolling to this mess that we've got today.

So you have to ask yourself, if people signed off on that document and we're now going down the route of arbitration, they'd better have known what they were doing, right?

**Ms. Shelly Jamieson:** Yes. I would say, though, it was to enter into discussions to see if there was anything to be done. So I guess I would say that this decision, this arbitration piece—the decision to cancel the contract had already happened. So now this was, is there something else on the table, something else that could be done?

If I were a minister signing that, I know I would have the assurance that nobody could cut a deal without us coming back to cabinet. So I'm just differentiating that from a decision that is final and you're never going to hear from anybody again.

**Mr. John Yakabuski:** It had to come back to cabinet.

**Ms. Shelly Jamieson:** It had to come back. It was a note—I'm sure you have the minute. It was a note in there that said you had to come back.

**Mr. John Yakabuski:** You talked about, in your discussions with Mr. Delaney, so I trust that it's all fine and good—you started to talk about turbines and whether we'd buy—

**Ms. Shelly Jamieson:** Yes, the big—

**Mr. John Yakabuski:** Yes, those big things. Interestingly enough, we're in a situation today where the province, essentially the people of Ontario, are being sued for



\$2.5 billion or \$2.25 billion by developers that were told years ago—and I know you've been the secretary of cabinet since 2008, correct?

**Ms. Shelly Jamieson:** Yes.

**Mr. John Yakabuski:** So within that time frame, that they were going to be able to build these wind turbines in the Great Lakes, and then—

**Mr. Bob Delaney:** Wait a minute. Chair—

**Mr. John Yakabuski:** I haven't asked a question; I'm making a statement. I'm talking about history here. So—

**Mr. Bob Delaney:** Chair, he's welcome to make a statement about anything that pertains to either the Mississauga or the Oakville power plants—

**Mr. John Yakabuski:** It does.

**Mr. Bob Delaney:** —as long as it doesn't lead away from the mandate of the committee.

**Mr. John Yakabuski:** Of course.

**The Chair (Mr. Shafiq Qaadri):** Your point is well understood, and we'll—

**Mr. John Yakabuski:** Thank you very much, Chair. We were listening very intently to Mr. Delaney and promised him earlier we wouldn't interrupt. I thought we had a similar deal, but apparently not.

Anyway, at some point they were given this assurance, or contracts were signed, to build turbines in the Great Lakes, and that political decision was then made some time later to cancel those contracts. Would there have been a cabinet document—and you were the secretary of cabinet—that got circulated for a walk-around on that one? That kind of came out of the blue. The 2011 election was approaching, and I recall the announcement that they were not going to proceed with the building of these turbines in the Great Lakes. Do you recall if there was a cabinet document on it?

**Mr. Bob Delaney:** Chair, on a point of order—

**Mr. John Yakabuski:** I'm trying to get—

**Mr. Bob Delaney:** I would like a ruling—

**The Chair (Mr. Shafiq Qaadri):** Mr. Delaney, your formal point of order.

**Mr. Bob Delaney:** I would like a ruling from the Chair on whether this particular line of discussion is within the mandate of the committee.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. Your point is well taken.

Mr. Yakabuski, we would once again encourage you to confine your remarks to the mandate of the committee. Please proceed.

**Mr. John Yakabuski:** I am, and what I'm trying to get at is the importance of MOUs and cabinet documents, Mr. Chair, because that's essentially what we've been talking about here today. So I guess what I'm asking about is: Was there, at that time, a cabinet document or an MOU signed?

**Ms. Shelly Jamieson:** I really don't recall. I'm sitting here trying to recall. I certainly know the issue you're talking about. I can't speak to what happened. I can't; I don't recall.

**Mr. John Yakabuski:** Yes, because we're trying to determine and try to put the weight that's attached with

these cabinet documents and these walk-arounds and those kinds of things because—

**Ms. Shelly Jamieson:** I can just say that on walk-arounds, as secretary of cabinet, I had a responsibility to ensure that, whenever possible, there was a full cabinet discussion about issues. Walk-arounds are not a good way to run the government.

**Mr. John Yakabuski:** No.

**Ms. Shelly Jamieson:** If you're a cabinet minister, you want the opportunity to sit at that table and have those discussions. So I monitored the number of walk-arounds, the types of issues; it was part of the job of my office. They ebbed and flowed, let me say. Then I would say, "No, wait a minute, there's just too many." Someone who comes in says, "We have to do this," because by Tuesday something happens, and we say, "Well, where were you? Why didn't you plan better?" So there were a lot of discussions—

**Mr. John Yakabuski:** Yes. That's what the whole crux of this committee is about, now. Why didn't they plan better?

**Ms. Shelly Jamieson:** I'm just giving you sort of the context for walk-arounds. It's not the ideal way to do cabinet business and generally frowned upon, unless it's the only option you have for time.

**Mr. John Yakabuski:** So you don't recall this specific one?

**Ms. Shelly Jamieson:** I do not.

**Mr. John Yakabuski:** I'm just trying to see if there's a pattern. Of course, now we're in a situation where this could be even more costly than the gas plant cancellation, if the litigants are successful.

**Ms. Shelly Jamieson:** I'm just not familiar with—

**Mr. John Yakabuski:** No, I understand. You're not giving all of your attention to what's going on at Queen's Park these days, and I understand that.

**Ms. Shelly Jamieson:** I'm not, actually.

**Mr. John Yakabuski:** We appreciate you coming to join us.

I think you've pretty well answered me on these issues on the cabinet documents and the MOUs.

I'm going to ask one more specific question, and I know this is probably challenging your memory on that because you're going back to the time, but at that time, for those people who signed the MOU, I don't think they were chosen randomly—as you say, Chris Bentley was one of them. I don't think they were chosen randomly. Before they signed that, were there any discussions involving those four people where they would have known that—what we're talking about here is, "I want you to understand. This is about the Oakville gas plant cancellation. We know we're going into a new phase here now, and this is going to be a big political issue down the road. We expect it's going to hit the fan," as they say, "and you all understand that the costs here are—there are going to be some sunk costs, but then there are going to be a whole lot of other associated costs that go well beyond that that are going to conceivably go—through the OPA and discussions with them—into



the hundreds of millions of dollars. So we want you to understand, when you're signing this, that this is what we're going to be discussing. This is our next phase, to go into a process to try to deal with all of the facts and figures surrounding those possibilities." They would have been aware of that, would they not?

**Ms. Shelly Jamieson:** That is the job of the Premier's chief of staff, to brief those people. I would say some of those people would have been chosen randomly. It would have been a proximity issue—"What does the schedule look like?" But because those people are being asked to sign on, they would look for the Minister of Finance and the Minister of Energy to be signatories, because they would want the confidence that those two people would have had more face time and airtime on this issue.

**Mr. John Yakabuski:** Right.

**Ms. Shelly Jamieson:** I think Minister Jeffrey and Minister Wynne, at the time, were in the neighbourhood. I really do.

**Mr. John Yakabuski:** Okay.

**The Chair (Mr. Shafiq Qaadri):** Thank you very much.

Mr. Tabuns?

**Mr. Peter Tabuns:** Thank you, Chair.

To go back to the question I was asking before I lost my time, is it standard practice for the Premier's office staff to make commitments on projects which are being managed by other ministries?

**Ms. Shelly Jamieson:** It's not uncommon. You and I can talk about what standard practice is. It depends what the style of the Premier's office is at the time. Some of them are more centralized and some are more decentralized. I would say, on some issues, that the Premier's office—is it a government issue, in this case a McGuinty government issue? Or is it just a ministerial issue?

It would vary, to be honest. It wasn't that uncommon, but they would always have the minister—they would be working with the minister to understand what the minister wanted out of this. It would be collaborative.

**Mr. Peter Tabuns:** Okay. In the question of the Ontario Power Authority getting instructions to discontinue the contract at Oakville and start a process, I can't find any ministerial directive.

**Ms. Shelly Jamieson:** Really?

**Mr. Peter Tabuns:** Really.

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**Ms. Shelly Jamieson:** Then what is the October 7 letter? Who wrote it?

**Mr. Peter Tabuns:** That was a letter from the OPA to TransCanada Enterprises saying, "We are severing our relationship." But when I questioned Mr. Andersen, he was given verbal instructions. He asked Mr. Ben Chin to confirm with the Premier's office that the verbal instructions were correct. The verbal instructions were verified by Mr. Chin. Then there was an exchange of emails about the content of the October 7 letter to TransCanada. No ministerial directive was ever issued that I can detect or that shows on the public record.

**Ms. Shelly Jamieson:** So I'm mistaken, then. I apologize. In my head, this was—

**Mr. Peter Tabuns:** I know, and Jamison Steeve said the same thing.

**Ms. Shelly Jamieson:** Oh, well, I'm—

**Mr. Peter Tabuns:** I'm puzzled as well, but I just know that in terms of a formal record of a ministerial directive—

**Ms. Shelly Jamieson:** What about on Mississauga?

**Mr. Peter Tabuns:** There was a ministerial letter but not a directive.

**Ms. Shelly Jamieson:** And he was also told first verbally.

**Mr. Peter Tabuns:** Probably, yes.

**Ms. Shelly Jamieson:** Yes, I know he was.

**Mr. Peter Tabuns:** What's the legal implication of sending a ministerial directive? Who does it protect? What is its function? Why don't all decisions just get conveyed verbally?

**Ms. Shelly Jamieson:** In terms of agency relationships with the government, agencies with boards like to make sure they have understood the direction. Mostly agencies just operate on their own and have a business plan that's filed with the government once a year—"These are the things that we're going to do"—and it's approved. But every now and then, things change and the government has a direction to an agency. The practice, mostly, would be that that would come—I shouldn't say "mostly"; I guess it would come in writing. It would depend how formal the decision was. Instead, if it's like "Grow tourism," that's maybe not—

**Mr. Peter Tabuns:** Or the scale of the decision. Like if you're talking about a \$1-billion contract, typically that would be worth more than a phone call.

**Ms. Shelly Jamieson:** Yes, but I would say that in both the cases of Mississauga and Oakville we wouldn't have known how much they were going to cost.

**Mr. Peter Tabuns:** You knew the value of the contract, though, even if you didn't know the value of the cancellation?

**Ms. Shelly Jamieson:** That's true.

**Mr. Peter Tabuns:** Because in fact—

**Ms. Shelly Jamieson:** So it could have been up to the value; yes, that's true.

**Mr. Peter Tabuns:** Craig MacLennan did ask at the time what the range was, and he was told the upper range was \$1.2 billion. So this was not a minor contract.

**Ms. Shelly Jamieson:** No.

**Mr. Peter Tabuns:** What's the responsibility of the board of an arm's-length agency when they're given an instruction? Are they supposed to engage in due diligence before they act on that, or are they supposed to simply act?

**Ms. Shelly Jamieson:** First of all, there are some 600 agencies. One of the problems, I think, in this province, is that there are almost as many definitions of the relationship. The more sophisticated—I would say that OPA is one of the more sophisticated agencies—would have a very serious sense of their own governance model, their own due diligence and where they put their word to something or do an estimate to something. I can't say that



all of them would do that, but I would say that most of them would say, "What does that mean? Let's think about what the implications are." There have been instances with agencies where a chair and a CEO might push back on direction given from the government. That's either sorted out or it isn't. So the relationships are different, I guess.

**Mr. Peter Tabuns:** You've answered my question; thank you.

You said, in your last visit here, that a week before the October 7, 2010, letter/decision/announcement, you were told that David Lindsay said his minister was considering a letter to the OPA to cancel the Oakville gas plant. Were you aware at that time that this came out of a discussion between the Premier's office and TransCanada Enterprises?

**Ms. Shelly Jamieson:** No, but as a good secretary of cabinet I went down the hall to check to make sure that they did know, and they did. They affirmed that they did. Because I hadn't heard about it at all and wanted to make sure that this was known, and it was.

**Mr. Peter Tabuns:** Sorry, you were made aware that the Ministry of Energy knew that the Premier's office had—

**Ms. Shelly Jamieson:** No, I was made aware by the deputy of energy that his minister was considering writing this letter and cancelling the plant. I went to see the chief of staff in the Premier's office and asked if he was aware of that. That is a pretty normal thing, actually. I would have seen him several times a day and we would compare notes on what was going on. I was just making sure that he was aware, and he was. So I don't know which happened first, but—

**Mr. Peter Tabuns:** But you tried to make sure that the parties that were involved in this were aware of what each other was doing?

**Ms. Shelly Jamieson:** Correct.

**Mr. Peter Tabuns:** No one was freelancing?

**Ms. Shelly Jamieson:** No. That was part of my job.

**Mr. Peter Tabuns:** Did Deputy Lindsay tell you there was already an agreement between the Premier's office and TransCanada to protect TransCanada's profits in all of this?

**Ms. Shelly Jamieson:** At some point later—not the first time, not in that first conversation, but at some point later—and I'm sorry; I can't tell you when it was—he came to see me and told me that he had heard that.

**Mr. Peter Tabuns:** Was this in April of the following year, when the lawsuit was started against—

**Ms. Shelly Jamieson:** Yes, it was much later than the October time frame, but I can't tell you when it was. But he did come and tell me that.

**Mr. Peter Tabuns:** And did he say that all of these directions were coming from the Premier's office and not from the minister's office?

**Ms. Shelly Jamieson:** No. He cited three individuals, one of whom was from the minister's office—so again, I said it was collaborative—and two from the Premier's office.

**Mr. Peter Tabuns:** And again, those three individuals would have been?

**Ms. Shelly Jamieson:** Jamison Steeve, Sean Mullin and Craig MacLennan. Craig was with the—he was the minister's chief.

**Mr. Peter Tabuns:** And they would have been at the heart of that liaison group between the minister's office and the Premier's office?

**Ms. Shelly Jamieson:** Yes. And—yes.

**Mr. Peter Tabuns:** Okay. Were you aware, when Chris Morley came back to you about the arbitration process, that it strongly favoured TransCanada Enterprises, that the terms of the arbitration were to the disadvantage of the OPA?

**Ms. Shelly Jamieson:** I'm not sure of the sequence. I would say Colin Andersen told me the same thing. So I more remember hearing from Colin.

**Mr. Peter Tabuns:** And you can't remember whether this was before or after the arbitration was approved?

**Ms. Shelly Jamieson:** It was all happening at the same time. It would all have been right around the same time, in the summer of 2011.

**Mr. Peter Tabuns:** And did you discuss these matters in your regular meetings with the Premier?

**Ms. Shelly Jamieson:** No. That particular—

**Mr. Peter Tabuns:** Yes, that particular matter.

**Ms. Shelly Jamieson:** No.

**Mr. Peter Tabuns:** Is there a particular reason you wouldn't have?

**Ms. Shelly Jamieson:** Just that my agenda would have been sort of things that I thought weren't being discussed with him, with his staff. My time with him was always tight, and I always got to the point on things I wanted to make sure I said to him. I knew the advice was going through. Our advice went through to the Premier. I know that.

**Mr. Peter Tabuns:** Okay.

**Ms. Shelly Jamieson:** That was the relationship.

**Mr. Peter Tabuns:** I don't have any further questions. Thank you.

**Ms. Shelly Jamieson:** Thank you very much.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. To the Liberal side. Mr. Delaney.

**Mr. Bob Delaney:** Ms. Jamieson, I want to thank you very much for having come in a second time and for sharing the insight that you always bring. Your answers have always been clear and concise and direct, and the committee appreciates the time that you've spent to come in and enlighten us.

Chair, that's all I have.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Delaney. And thanks to you, Ms. Jamieson, not only for today's testimony but for the repeat appearance. Certainly, we'll let you know if there's to be a third. Thanks to you for your services to the province of Ontario and the people, in your various capacities here. You're officially dismissed.



## SUBCOMMITTEE REPORT

**The Chair (Mr. Shafiq Qaadri):** Subcommittee report, Monsieur, Señor Del Duca, por favor.

**Mr. Steven Del Duca:** Thanks very much, Chair. The report of the subcommittee:

Your subcommittee on committee business met on Thursday, November 21, 2013, to consider the method of proceeding on the orders of the House dated February 20, 2013, and March 5, 2013, and recommends the following:

(1) That the redacted version of non-confidential documents the committee received from the Ministry of Energy and the office of the Minister of Energy in response to the committee's August 27, 2013, motion form part of the committee's public record.

(2) That the remaining two versions of confidential documents the committee received from the Ministry of Energy and the office of the Minister of Energy—Ministry of Energy—excuse me—

**The Clerk of the Committee (Ms. Tamara Pomanski):** It should be "Minister."

**Mr. Steven Del Duca:** Yes, that's what I thought—of the Minister of Energy in response to the committee's August 27, 2013, motion not form part of the committee's public record. That the Clerk of the Committee retains the two versions of confidential documents for the duration of the committee's mandate. Upon completion of the committee's mandate or dissolution of Parliament, whichever comes first, the Clerk of the Committee shall return the two versions of confidential documents to the Ministry of Energy and the office of the Minister of Energy.

I move that the subcommittee report be adopted.

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Del Duca. Are there any discussion points on this before we move to adoption? Seeing none, those in favour of the subcommittee report, as read? Those opposed? The motion carries.

**Mr. Peter Tabuns:** Mr. Chair?

**The Chair (Mr. Shafiq Qaadri):** Yes, Mr. Tabuns.

**Mr. Peter Tabuns:** The Minister of Finance was to go through a variety of documents, and there were some Cabinet Office documents as well that were to be redacted. I don't believe that they have come back to us. Through you, Mr. Chair, to Mr. Delaney: I know that you have been following up on this—

**Mr. Bob Delaney:** Mercilessly.

**Mr. Peter Tabuns:** I'm very appreciative and I actually accept your word on that. What's the status of your merciless efforts?

**The Chair (Mr. Shafiq Qaadri):** Thank you, Mr. Tabuns. Ms. Pomanski.

**The Clerk of the Committee (Ms. Tamara Pomanski):** I can provide a bit of an update, just from my end. I had sent another letter to the Ministry of Finance, I think it was last week, requesting an update, because I hadn't heard from them. I received a letter back from the deputy minister saying that they should be able to fulfil our request within the next few weeks.

**Mr. Peter Tabuns:** Thank you.

**The Chair (Mr. Shafiq Qaadri):** Just before we conclude, I'd also like to commend our Clerk and her office for finding the most economical USB keys, I think, known to North America.

If there's no further business before this committee, the committee is adjourned.

*The committee adjourned at 1621.*







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